TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 51

DAVID R. SCULL, PETITIONER,

vs.

COMMONWEALTH OF VIRGINIA EX REL.
COMMITTEE ON LAW REFORM
AND RACIAL ACTIVITIES

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS
OF THE COMMONWEALTH OF VIRGINIA

PETITION FOR CERTIORARI FILED SEPT. 17, 1958
CERTIORARI GRANTED JUNE 8, 1959

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[fol. E] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

COMMITTEE OF LAW REFORM AND RACIAL ACTIVITIES,
Petitioner,

vs.

DAVID H. SCULL, Respondent.

PETITION FOR RULE TO SHOW CAUSE—
Filed September 20, 1957

To: The Honorable William D. Medley, Judge of the Circuit Court of Arlington County, Virginia.

The Committee on Law Reform and Racial Activities of the General Assembly of Virginia, by its Chairman and its Chief Counsel, respectfully represent that a subpoena was heretofore served requiring the appearance of one David H. Scull and further requiring him to testify and the truth to say in connection with an investigation being made by said Committee relating to the activities of corporations, associations and other like groups which seek to influence, encourage, or promote litigation relating to racial activities in this State; that said testimony is material to the proper conduct of the investigations with which said Committee is charged; that the said David H. Scull has unreasonably refused to answer lawful questions propounded to him by said Committee;

Wherefore, Petitioner prays that a Rule be forthwith issued requiring the said David H. Scull to show cause, if any he can, why he should not be required to appear and testify before said Committee on matters described in the process of said Committee served on Respondent on September 17, 1957.

Committee on Law Reform and Racial Activities of the General Assembly of Virginia, By James M. Thomson, Chairman.

Leslie Hall, Chief Counsel.

[fol. F] *Duly sworn to by James M. Thomson, jurat omitted in printing.*

[fol. G]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

[Title omitted]

ORDER AWARDING RULE TO SHOW CAUSE—
Entered September 20, 1957

This Day came the Committee on Law Reform and Racial Activities and tendered its sworn Petition praying that a rule be awarded requiring the Respondent, David H. Scull, to appear and show cause, if any he can, why he should not be requiried (sic) to appear and testify before said Committee on matters described in the process of said Committee served on Respondent on September 17, 1957.

It Appearing proper so to do, it is

Ordered that a rule is hereby awarded against the Respondent and directed to the Sheriff of the County of Arlington which rule, together with an executed and attested copy of the Petition hereinbefore filed, he shall forthwith serve upon the Respondent requiring him to appear before this Court at 10:00 A.M. on the 8th day of October, 1957, to show cause, if any he can, why he should not be required to appear and testify before said Committee on matters described in the process of said Committee served on Respondent on September 17, 1957.

Entered September 20, 1957.

/s/ WILLIAM D. MEDLEY, Judge.

[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

[Title omitted]

MOTION TO QUASH RULE TO SHOW CAUSE—
Filed October 14, 1957

Movant, David H. Scull, moves the Court to quash and dismiss the rule to show cause issued against him pursuant to an order of this Court on September 20, 1957. Said rule commands the Movant to appear and show cause why he should not be required to answer before the Thomson "Racial Activities" Committee certain questions Movant has heretofore refused to answer before that Committee.

Movant cannot be compelled to answer the questions he refused to answer before the Committee on September 20, 1957, for the following reasons:

1. The demand made upon Movant to answer said questions is in violation of his rights under the Due Process and Equal Protection guarantees of the Fourteenth Amendment to the United States Constitution in the following respects and particulars:

(a) The Thomson Committee was established and given investigative authority, as part of a legislative program of "massive resistance" to the United States Constitution and the Supreme Court's desegregation decisions, in order to harass, vilify, and publicly embarrass members of the NAACP and others who are attempting to secure integrated public schooling in Virginia.

(b) The purpose and effect of the inquiries of the Thomson Committee, including those addressed to the [fol. J] Movant, is denial of access to the courts for vindication of Constitutional rights, by harassment and exposure of school integration plaintiffs and members of the organi-

zation which is most actively engaged in litigating the integration suits.

(c) The inquiries addressed to Movant violate his rights of free speech, assembly, and petition because they repress freedom of expression and constitute an unjustified intrusion into and restraint upon his association with others in legal and laudable political and humanitarian causes.

(d) The demand for answers made upon Movant by the Thomson Committee is arbitrary and unreasonable inasmuch as there is no justification for the special and selective investigatory authority granted to the Thomson Committee, and nothing in that authority renders pertinent the demand made upon Movant to disclose his civic and political associations and activities.

(e) The Thomson Committee's authorizing resolution is too vague and imprecise to justify compelled testimonial disclosures.

(f) The Committee failed, despite proper inquiry made by Movant, to inform him in what respect its questions were pertinent to the subject under inquiry by the Committee.

(g) The information sought from Movant was neither intended to, nor could reasonably be expected to, assist the Legislature in any proper legislative function.

2. The demand made upon Movant to answer said questions is in violation of his rights under the 8th, 11th and 12th sections of the Constitution of Virginia in the respect and reasons set forth in paragraph 1.

3. For the reasons hereinbefore stated, and particularly because the inquiries addressed to Movant are not pertinent to the inquiry and the authority of the Thomson Committee, Movant's refusal to answer was predicated on "legal cause" within the terms and the meaning of Chapter 37 of the Acts of the General Assembly, 1956, Extra Session.

[fol. K] For the foregoing reasons, it is respectfully submitted that the rule to show cause issued upon the Movant must be quashed and dismissed.

/s/ Karl Sorg, Counsel for Movant.

Joseph L. Rauh, Jr., John Silard, Of Counsel.

Certificate of service (omitted in printing).

[fol. 1]

In the Circuit Court of the County of Arlington, Commonwealth of Virginia

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Committee on Law Reform and Racial Activities,

Petitioner,

vs.

David H. Scull, Respondent.

Arlington, Virginia

Transcript of Proceedings—Tuesday, October 15, 1957

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m., on a petition for a rule to show cause why Respondent should not be required to testify before the Committee on Law Reform and Racial Activities.

Before:

Honorable Emory N. Hosmer, Judge.

Appearances:

Leslie Hall, Esquire, For the Petitioner.

Karl Sorg, Esquire, and Joseph Rauh, Esquire, and John Sillard, Esquire, For the Respondent.

[fol. 3] PROCEEDINGS

Mr. Sorg: I would like to introduce Mr. Joseph L. Rauh, Jr., and Mr. John Sillard, members of the Bar of the

District of Columbia, the United States District Court for the District of Columbia, the United States Supreme Court, and move their admission for the purpose of trying this case.

The Court: All right.

Mr. Rauh: Thank you, Your Honor.

The Court: Are you ready?

Mr. Hall: Ready, Your Honor.

Mr. Rauh: We are ready, Your Honor.

The Court: All right.

OPENING STATEMENT BY MR. HALL

Mr. Hall: May it please the Court, this matter comes on here today on a petition by the Committee on Law Reform and Racial Activities to require the respondent, David H. Scull, to answer certain questions which were propounded to him at a hearing held by the Committee on September 20, 1957, here in Arlington County.

The respondent refused to answer those questions and filed a written statement with the Committee at that time basing his refusal on the provisions of Section 8, Section (illegible) and Section 12 of the Virginia Constitution.

Since that time, as of yesterday, counsel for the respondent filed with me a copy of a motion to quash the rule which was issued against him pursuant to the petition [fol. 4] (illegible) filed on behalf of the Committee and now apparently seeks to rely also on the provisions of Section 14 of the United States Constitution.

I assume that that motion to quash will have to be disposed of first and that the burden of going forward with that motion will fall on counsel for the respondent.

The Court: Do you have those papers in the file, the motion to quash?

Mr. Sorg: It was filed yesterday, if the Court please.

(A short recess was taken.)

Mr. Rauh: Now, if Your Honor has the papers before you, I would like to make a suggestion: I by no means insist on this in any way but it would seem to me that it might be more orderly and expeditious if the Committee

went ahead to prove its case in support of its petition here because the same factual material that will be involved in that will also be involved in our motion to show cause.

On the other hand, if Mr. Hall is anxious to go in some other direction, I do not have any feeling about it. I was just offering this as a possible orderly method of getting the facts before Your Honor and they can argue for their petition and we can argue for our motion. I just suggest that. It is up to Mr. Hall and Your Honor whether you care to follow that procedure.

[fol. 5] Mr. Hall: We have no objection to that. I just thought you wanted to dispose of this first, but if the Court would like to go ahead in the manner suggested by Mr. Rauh, we are perfectly willing.

The Court: I have the motion to quash the rule.

Did you say that Mr. Scull had filed written reasons for not answering the questions?

Mr. Hall: Yes, sir.

The Court: Were they filed in the case?

OFFERS IN EVIDENCE

Mr. Hall: They were not filed in the case. I have the original of them here and I would like to submit them to the Court at this time.

You have a copy, I assume?

Mr. Rauh: They are in the transcript. They are in the transcript at pages 5 to 5-C, so that I presume that when they come with their proof they will advert to them.

This was actually typed in by the Reporter, right into the transcript.

Mr. Hall: If you want to, we can stipulate that that is the original of the statement.

Mr. Rauh: We gladly so stipulate, yes, Your Honor.

Mr. Hall: Will you also stipulate that this is the subpoena that was served on him?

Mr. Rauh: We stipulate that that is the subpoena that was served upon Mr. Scull.

[fol. 6] Mr. Hall: May it please the Court, I would like to call as the first witness for the Committee Mr. James M. Thomson, Chairman of the Committee.

The Court: Before you have Mr. Thomson take the stand, let me read these statements and the motion to quash.

Mr. Hall: All right, sir.

(A short recess was taken.)

The Court: Is it agreed that the precise questions asked which Mr. Scull declined to answer are included in the transcript of the record?

Mr. Hall: As far as we are concerned.

The Court: I would like to read it.

Mr. Rauh: I have some notes on ours, but——

Mr. Hall: We have a copy here, Your Honor.

(A short recess was taken.)

The Court: All right, Mr. Hall, do you want this transcript?

Mr. Hall: I would like to call as the first witness for the Committee Mr. James M. Thomson.

Whereupon, JAMES M. THOMSON, having been first duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Hall:

[fol. 7] Q. Your name is James M. Thomson?

A. Yes, sir.

Q. Mr. Thomson, are you a member of the General Assembly of the Commonwealth of Virginia?

A. Yes, sir; in the City of Alexandria.

Q. Specifically, a member of the House of Delegates?

A. Yes, sir.

Q. Were you a member of that body in 1956?

A. Yes, sir.

Q. Now, pursuant to the provisions of Chapter 37 of the Acts of the General Assembly, extra session of 1956, were you named as a member of the committee that was authorized by that Act?

A. Yes, sir, I was, by Speaker E. Blackburn Moore.

Q. Was that Committee subsequently duly organized after all of the members had been named?

A. It was, in Richmond, Virginia.

Q. Who was named as Chairman of that Committee?

A. I was.

Q. Will you name the other members of the Committee, please?

A. Senator Earl A. Fitzpatrick, from Roanoke.

George E. Allen, Delegate from Richmond, Virginia.

Harold Purcell, Delegate from Louisa County.

Frank P. Moncure, Delegate from Stafford County.

[fol. 8] Q. Senator George Aldhizer?

A. From Broadway.

Delegate Charles Cross from Norfolk County.

Senator Landon R. Wyatt from Danville.

Q. Delegate R. Macklin Smith?

A. From Kenbridge, is likewise a member.

Q. I believe the Committee is composed of four Senators and six members of the House of Delegates, is that not correct?

A. That is correct.

Q. Did there come a time, specifically on September 20, 1957, when the Committee convened in Arlington County, Virginia, for the purpose of holding hearings?

A. There did.

Q. And as a part of the proceedings at that time, was one David H. Scull of Annandale subpoenaed to appear before the Committee and give testimony and produce certain records, documents, and other instruments?

A. The Committee Counsel prepared a subpoena pursuant to my direction and I signed the same and by Committee Counsel it was placed in the hands of the appropriate sheriff or city sergeant for service.

Q. Is that the subpoena that has been stipulated here as being the one that was served on the respondent, David H. Scull?

[fol. 9] A. It was.

Q. Did you see Mr. Scull here in the courtroom here today?

A. Yes, sir, I do.

Q. Will you point him out, please?

A. The gentleman seated at the end of this table.

Q. Pursuant to that subpoena, did Mr. Scull appear before the Committee on September 20, 1957?

A. He did, with his counsel, a Mr. Fanelli from Washington.

Q. Did his counsel remain with him during the entire proceedings?

A. Once he was called he did remain with him the entire time, yes, sir.

Q. I am going to have to ask a leading question on this because I don't know whether Mr. Thomson recalls it or not.

Mr. Scull was not sworn to testify but was given the opportunity to affirm to tell the truth, was he not, because of his religious convictions?

A. That is correct. He stated he had an objection to swearing an oath and he was affirmed.

Q. That he was a Quaker, and that therefore he could not swear?

A. That is correct.

Q. Following his being allowed to affirm to tell the [fol. 10] truth, was he asked certain questions by counsel for the Committee and also by the Chairman and members of the Committee?

A. That is correct; he was.

Q. Specifically, was he asked his name, place of residence, and occupation?

A. He specifically was asked those questions.

Q. Did he answer those questions?

A. He did.

Q. After that, was he asked certain questions about his connection with various organizations?

A. He was asked questions as to whether or not he was a member of various organizations in addition to other questions that were asked.

Q. What was his response to the questions that were asked of him with respect to his connection with various organizations?

A. Mr. Scull had filed with the Committee a statement by which he contested the jurisdiction of the Committee, among other things, and in each instance when the question was asked him he merely responded that he refused to reply on the basis of that statement.

Q. Is that statement that you refer to the statement that has been introduced in evidence here and stipulated to by counsel on both sides as being the statement that was [fol. 11] filed by Mr. Scull with the Committee at that time?

A. It is, and it is the same statement repeated in the transcript.

Q. Did he at that time invoke the provisions of the Fifth Amendment to the United States Constitution?

A. No, sir, he did not.

Q. Was he given an opportunity to do so if he chose to do so?

A. He was advised by counsel that he would have had that opportunity if he so desired.

Q. But he relied on the written statement that was furnished to the Committee at that time?

A. In each instance he refused to answer the question on the basis of the statement which had been furnished to the Committee by Mr. Scull and his attorney.

Q. Did he at any time during the proceedings before the Committee rely upon any other grounds than those stated in the written statement that he filed with the Committee?

A. No, sir.

Q. Did he at that time seek to invoke any provisions of the 14th amendment to the United States Constitution?

A. No, sir, he did not.

Mr. Hall: Now, may it please the Court, I can ask Mr. Thomson, if you like, the specific questions that were asked of the witness, or we can stipulate, if counsel is [fol. 12] agreeable, that the copies of the transcript the Court has already read contains the questions and answers that were propounded to the witness at that time. We can save time by stipulating that.

Mr. Rauh: We would be happy to do that, Your Honor.

The Court: All right.

By Mr. Hall:

Q. Now, was it the purpose of the Committee if it could obtain answers to these specific questions to explore the matter any further?

A. It definitely was. These were merely preliminary questions that were asked to Mr. Scull to determine whether or not he belonged to certain organizations.

Obviously the following question was whether or not any of those organizations were racial in character. That is a matter in which we, of course, are primarily interested with the Committee.

We discovered in the course of the investigatory work that we have performed that there are many organizations which used the facilities which Mr. Scull seemed to have and we merely wished to explore how that organization or group of organizations was working in concert, or whether it was working in concert.

Q. I believe, in addition to being asked as to his member-
[fol. 13] ship in certain organizations, he was asked about the use of a certain post office box number in Annandale, was he not?

A. That is correct. That is the information we had, that these various organizations all jointly used the same box.

Q. Is it not also correct that he was asked about his contributions to or encouragement of litigation pertaining to integration of the races?

A. That is true. He was asked whether or not he had paid any court costs or attorneys' fees in regard to any of the school suits filed in Virginia, and he refused to answer that on the basis of the statement which he had filed.

Q. And all of those questions and answers are contained in this transcript that you have before you there?

A. That is correct.

Q. I believe you said that if you had obtained answers to these questions that the Committee would then explore related matters with this particular witness?

A. That is correct.

Q. And it is still the desire of the Committee, you being the chairman, to do so if answers can be obtained to the questions, specific questions that were propounded to him?

A. That is correct.

[fol. 14] Q. If the Court so orders the respondent to testify to answer these questions, is it the purpose of the Committee to convene for the purpose of giving Mr. Scull an opportunity to answer the questions and any related questions?

A. That is correct. I would issue a call for a meeting of the Committee, if the Court would determine that the questions should be answered, and the related questions.

Q. Now, in order to bring out the importance of getting these answers as soon as possible, will you tell the Court when the functions of the Committee are due to expire?

A. The Committee which was created under the Acts of the General Assembly in the special session of 1956, Chapter 37 to be specific, provides in its own terms that the Committee must report by November 1st and go out of business.

We have approximately two weeks in which to complete our study and write out report.

Q. Would the Committee be able to properly complete its work if the testimony of this witness is delayed beyond that date?

A. Of course, that is a matter of degree. We certainly can complete it, complete the work we are doing, with or without the statement. I (sic) would be a great advantage to the Committee to have the testimony of this gentleman and we would like very much to do it in rounding out and completing our report.

[fol. 15] Mr. Hall: Your witness.

Cross examination.

By Mr. Rauh:

Q. Mr. Thomson, I believe you said that the Committee was duly organized at a meeting in Richmond, Virginia; is that correct?

A. That is correct, in the Appropriations Committee room.

Q. What, sir?

A. In the Appropriations Committee room.

Q. At that time, the Committee adopted its rules, is that correct?

A. That is correct.

Q. It promulgated those rules?

A. If you mean it was written up in the minutes, that is correct.

Q. Was a copy of the rules furnished the witness?

A. No, sir, it was not.

Q. Do you have the rules of the Committee?

A. Not with me this morning, no, sir.

Q. Could you tell me whether the copy of the rules of the Committee has ever been published?

A. No, they have never been published.

Q. So, you were proceeding on the basis of unpublished rules, Mr. Thomson?

[fol. 16] A. That is correct.

Q. Could you tell me what is in those rules?

A. The only real restriction upon the Committee is a requirement which the Committee adopted itself that there must be three members present at any hearing.

Q. The only rule of this Committee is that there must be three members present at a hearing, is that correct?

A. Of course not; that is not the only one.

Q. What are the others?

A. That is the principal restriction.

Q. What are the other rules that you adopted in Richmond at this meeting?

A. We swore our transcriber at one of the meetings in Richmond to truly transcribe the proceedings, and of course we adopted a rule which would require that all proceedings be transcribed.

Q. Now, am I correct, Mr. Thomson, that the only rules are, one, that there shall be three persons at any hearing and that they shall be transcribed, is that correct?

A. No, I am not prepared to say those are the only two.

Q. See if you can think of some more, Mr. Thomson.

A. I cannot right at the minute.

Q. So at this minute those are the only two rules you can recall, is that correct?

A. That is correct.

[fol. 17] Q. What do you do when other problems come up before the Committee? Do you make up the rules as you go along?

A. We haven't found it necessary to make up any rules, Mr. Rauh.

Q. How do you decide whether questions are pertinent to the question under inquiry?

A. The Committee votes on it.

Q. Who made the rule that there provided for locking up the witness in this court house? Did you?

A. No witnesses were locked up in this court house, Mr. Rauh.

Q. The papers were in error when they said they had been locked up?

A. That is correct.

Q. That was a misstatement by the press, I take it?

A. That is correct.

Q. On what basis was the quorum set at three, Mr. Thomson?

A. It was a figure chosen by the Committee that would best facilitate the operation of the work of the Committee and yet insure the maximum attendance that we could do consistent with the members of the Committee coming from all over the State. Our Committee was picked from as wide, as diversified an area in the State, as it could be, and we had to hold the number fairly small so that in each [fol. 18] instance most of them would be able to attend.

Q. Mr. Thomson, were you not a member or employee of a Senate Investigating Committee?

A. Yes, sir, I was a member of the professional staff of the Committee on the Judiciary of the United States Senate.

Q. And of any subcommittee of that committee?

A. No, sir; member of the professional staff.

Q. Am I not correct that the investigating subcommittee of that committee does have published rules?

A. I couldn't honestly tell you that, Mr. Rauh; I have never gone into it; I have never had occasion to.

Mr. Hall: I object to it. I don't see what pertinence that has, what the Senate of the United States does, and what the General Assembly of Virginia might happen to do. They are entirely two different things and the functions are entirely separate and apart and we hope they will remain that way.

Mr. Rauh: There is no problem; the question has been answered. I have it answered but I just as leave not argue.

The Court: I do not see the relevancy of it.

Mr. Rauh: In order that I not appear before Your Honor as one who would ask a question as to which there was any question of relevancy, then I would like to state it, sir.

I am trying to show, and I believe I have shown, that a [fol. 19] committee which operates without rules violates due process of law; that this is a Committee that is operating without rules; and I even want to show with that question about the Senate Committee that the customary practice of all legislative committees is to have rules.

Now, the witness said he didn't know whether he did or did not, so I don't propose to continue it, but I did not want Your Honor to feel that I came here with any thought of asking questions that were not directly related to the defense.

We say this Committee acted in violation of due process of law and we are trying to get at it, sir.

By Mr. Rauh:

Q. How many witnesses were called before your Committee on September 19 and 20?

A. I don't remember the exact number.

Q. Roughly. I have no desire to embarrass you—just roughly.

A. I would say five, maybe ten. I couldn't honestly tell you the number now.

Q. How were they chosen?

A. How did we select the witnesses?

Q. What was your procedure for selecting them if you did not have any rules for this? What procedure did you follow in selecting them?

[fol. 20] A. Obviously our investigators had talked to various individuals. We had the information they brought back to us. This information we substantiated by the reports they gave us and we called those witnesses which we believed would give testimony to support the various allegations or charges that have come to us through other sources.

Q. Now, were all these witnesses questioned on the subject of racial integration?

A. In every regard they were questioned on some phase of racial integration.

Q. Were they questioned about the National Association for the Advancement of Colored People?

A. I couldn't possibly state that, Mr. Rauh. I don't recall.

Q. Well, was Mr. Scull mentioned in other parts of the testimony other than the time when he was before the Committee?

A. That again I could not tell you. I could not recall whether his name was specifically mentioned by anyone else in that group. If it did not show up in the records of the NAACP in Fairfax County, which were likewise subpoenaed that day. I recall that.

Q. Is the NAACP mentioned in other parts of the transcript other than Mr. Scull's testimony?

A. I am quite sure it is.

[fol. 21] Q. May I please have the transcript of the testimony on the 19th and 20th at the hearing here?

A. You asked for another rule. There it is. We make the transcript available to witnesses of their own testimony. We do not make available the transcript of the testimony as a whole to any one individual other than the Committee itself.

Q. When was this rule adopted, Mr. Thomson?

A. I cannot tell you, Mr. Rauh. It would be impossible for me to go out and pick a date out in the last nine months and specify.

Q. This was not one of the rules that was adopted when you were duly organized in the Appropriations room in Richmond, Virginia?

A. I am fairly certain it was not at that time.

Q. So you sort of make up your rules as you go along, would that be fair?

A. I wouldn't say that. I say we meet a contingency and make a decision at the time it was necessary to make a decision, Mr. Rauh.

Mr. Rauh: Now, Your Honor, we asked Mr. Hall for the full transcript of the hearings and I would like now to ask that they be produced.

If Your Honor please, this was a series of hearings or a series of witnesses at a related hearing in this court [fol. 22] house. One might ask for all the hearings of this Committee but I think that would be going a little far. Nor would I have the time to examine them. We do ask for all the testimony at the hearings at which Mr. Scull testified on the ground that it is relevant to our contention that the purpose of this Committee was not to obtain information for legislation but was to harass and injure the National Association for the Advancement of Colored People and by its efforts to prevent individual citizens of the State of Virginia from their constitutional right of access to the Courts of this State and to the Federal Courts in this State.

In order to do this, the minimum we believe we should see is the full transcript of the hearings before this Committee at that specific hearing at which Mr. Scull testified. We believe the transcript will help us demonstrate and we urge Your Honor to make it available to us.

I will not withhold questioning. One of my associates can examine it while I am examining Mr. Thomson so we will not delay Your Honor, which we have no intention of doing, so that we can demonstrate this two-fold purpose of the Committee of harassing, injury, weakening and defeating the NAACP, and preventing access to the Federal Courts.

Mr. Hall: Now, may it please the Court, this same request was made of me by Mr. Sillard, one of Mr. Rauh's associates, who wanted to examine the entire transcript of [fol. 23] the two days' proceedings. I refused that request at that time and I still refuse it. They want to know whether any testimony has been given with respect to Mr. Scull by any other witness and I specifically pointed out to them that the only place in the whole transcript that there was any mention of Mr. Scull by any other witness was when Mrs. Barbara Marx was asked if she knew Mr. Scull and she replied that she did.

Then Mrs. Geraldine Davis, Mrs. A. J. E. Davis, was also asked if she knew Mr. Scull and she said that she did not, but that as treasurer of the NAACP she had written a check to the Turnpike Press in payment of a bill for some

calendars. Those were the only questions in the entire two days' proceedings where Mr. Scull's name was mentioned by any other witness; that counsel on the other side knows that, and the only purpose in asking for this transcript at this time is to further hinder and delay the work of the Committee.

The Court: It seems to me that the power of the Committee as related to the question involved in this case is not determined by examination of the transcript of the testimony of all of the witnesses, or the witnesses who testified at this particular hearing.

RULING ON MOTION

The motion is denied.

Mr. Rauh: Excuse me, Your Honor. As you know, I am not fully familiar with Virginia practice. Mr. Sorg informs me I had better make an exception and I therefore [fol. 24] do so, sir.

The Court: All right.

By Mr. Rauh:

Q. What other information did you have, Mr. Thomson, about Mr. Scull when you served your subpoena?

A. It was reports of three or four individuals, together with a brochure which was received by me through the mail.

Q. Did this brochure indicate from what sources it emanated?

A. I am sure it did. I have forgotten exactly which one it does.

Mr. Rauh: I see Mr. Hall has a copy of this brochure and it would save time if I may borrow it, Mr. Hall.

By Mr. Rauh:

Q. Is this the brochure to which you are referring, Mr. Thomson?

A. One entitled "The Shocking Truth", yes.

Q. By whom is that brochure published?

A. Fairfax Citizens Council.

Q. What is the Fairfax Citizens Council?

A. It is an organization of—racial organization, I understand.

Q. Is it one of the group of white citizens councils?

A. Indeed I couldn't tell you that for a fact, Mr. Rauh.

[fol. 25] Q. You mean you used this information without knowing the source of what the Fairfax Citizens Council was from which it emanated?

A. Of course, I use anonymous telephone calls to begin an investigation with.

Q. So you did not investigate the reliability of the informant, is that correct, Mr. Thomson?

A. That is what I was doing on September 19 and 20, was investigating the reliability of it.

Q. You mean you called Mr. Scull? You didn't investigate the reliability of the informant, is that correct?

A. That is correct. I called Mr. Scull to establish whether or not what was reported in there was true.

Mr. Rauh: Your Honor, there is question now of keeping these papers that have been introduced in some order.

As far as I recollect now, we have the subpoena which was stipulated to and the transcript which was stipulated to.

Mr. Hall: The statement by Mr. Rauh.

Mr. Rauh: The statement by Mr. Scull which also appears in the transcript was stipulated to.

Now, shall we in some way identify those so we can keep a record here of the exhibits for the purpose of orderly procedure?

I was going to offer this, but I was trying to get the [fol. 26] numbers straightened out before I did that, sir.

Maybe if Mr. Hall would number those three he offered as his exhibits, maybe then I would offer this as our first exhibit. Would that be satisfactory?

The Court: Well, we have the subpoena which we had marked Petitioner's Exhibit No. 1 and the statement of David H. Scull, petitioner's exhibit No. 2. And what other?

Mr. Hall: The transcript.

The Court: We will mark the transcript No. 3.

(The documents referred to were thereupon marked for identification as Petitioner's Exhibits Nos. 1, 2, and 3.)

Mr. Rauh: I would like to offer the document identified by the witness, entitled "The Shocking Truth," emanating from the Fairfax County Citizens Council as, I guess we will call it, Respondent's Exhibit No. 1.

The Court: No. 1, all right.

(The document referred to was thereupon marked for identification as Respondent's Exhibit No. 1.)

Mr. Rauh: It is not a very good copy. I wonder if possibly Mr. Hall has two he would make one available to be the exhibit.

Mr. Hall: It is all right with me. I was looking to see if there were any pencil marks.

Mr. Scull's name is underlined in two or three places.

[fol. 27] Mr. Rauh: That's all right.

The Court: Respondent's Exhibit No. 1.

Mr. Rauh: Thank you, sir.

By Mr. Rauh:

Q. Mr. Thomson, you were the sponsor of H. 65 to create an investigative committee in the racial area, were you not?

A. If that was the number, that is correct. I couldn't tell you by the number.

Q. I will show it to you and ask you if that is the one.

A. Chapter 37, that is correct.

Q. And you sponsored a bill in the same area before H. 65, did you not?

A. Not before. It was part and parcel of the same thing.

Q. In other words, it would be fair to say that H. 65 is a revised version of your initial bill?

A. That is correct.

Q. In what way does it differ from your initial bill?

Mr. Hall: I object, Your Honor. I don't see the relevancy of this. This is an Act of the General Assembly now. Regardless of what the original version of the bill was, this is the law. It has no relevancy whatsoever to the petition

that is filed with the Court here to require this defendant [fol. 28] to answer the questions that were properly propounded to him by the Committee functioning under Chapter 37.

Mr. Rauh: If Your Honor please, there are several items of relevance.

In the first place, the construction of any bill is affected by the legislative history which shows prior bills, how it was amended, so that just on a simple matter of Your Honor's going to have to make an interpretation of H. 65, and will assist Your Honor in that interpretation, it would seem to me that these prior bills would be relevant.

Furthermore, I must say this is equally our purpose in all of this questioning, is to demonstrate that the purpose of this Committee has nothing whatever to do with the normal legislative activities but is an effort to harass racial integration organizations and to deny free access to the Courts.

In both regards we ask to be allowed to continue this line of questioning.

The Court: Well, the rule in that respect, it seems to me, so far as the contention of the respondent is concerned, I understand this to be an attack on the constitutionality of the Act and now you are asking the Court to construe the statute on the basis, I assume that it is ambiguous.

Mr. Rauh: Among other things. That will be one of our defenses to the petition.

[fol. 29] We have, after all—this is evidence now in the petition—I presume Your Honor will be happy to hear us before he grants the petition—one of our arguments will be that these questions should be construed as outside the authority of the Committee in order to save Your Honor from having to decide the constitutional question.

The Court: Well, insofar as the determination or the introduction of extrinsic evidence is concerned, it seems to me that the statute must be construed in accordance with its language if it is not ambiguous.

There is no showing that it is and it seems to me that the language of the statute as far as the statute itself is concerned is perfectly clear.

The purposes of the statute, as construed by reading the language of it, is something that you apparently are attacking; but so far as the intention of the Legislature is concerned, that is to be determined by reading the statute itself and evidence extrinsic to that is not pertinent or relevant.

Mr. Rauh: May I take an exception, Your Honor, please?

The Court: Yes, sir.

By Mr. Rauh:

Q. What other bills were enacted, what other bills in the racial area were enacted, simultaneously with H. 65?

[fol. 30] Mr. Hall: Objection, Your Honor, on the ground of relevancy.

Mr. Rauh: We make the same contentions, Your Honor.

The Court: Objection sustained.

Mr. Rauh: Exception, please, sir.

By Mr. Rauh:

Q. I will put one more question and then I will desist if I am successful in this:

Would it be fair to say, Mr. Thomson, that your bill, H. 65, was part of a package of bills directed at the National Association for the Advancement of Colored People?

Mr. Hall: I renew my objection, Your Honor.

Mr. Rauh: I make the same contention in support of this.

The Court: Objection sustained.

Mr. Rauh: Exception, please.

The Court: Yes, sir.

By Mr. Rauh:

Q. What organizations, other than the National Association for the Advancement of Colored People, have you investigated under this resolution? I am not now asking you about the history of the statute; I am saying, what have you done under it?

A. We have required information and we have investigated the organization popularly known as the Defenders—[fol. 31] Defenders of States Sovereignty and Individual Liberties, the NAACP, the State Conference of Branches, if you draw a distinction between that and the NAACP, and the NAACP Legal Aid and Defense Fund.

Mr. Hall: Seaboard White Citizens Council.

Mr. Rauh: What was that? I missed it.

Mr. Hall: The Seaboard White Citizens Council.

By Mr. Rauh:

Q. You have investigated, I take it, three areas of the NAACP that you mentioned?

A. If you separate them, yes.

Q. Or either put together or separately, but also there were two others. Would you mind repeating them? I didn't get them clear.

A. The Defenders, an organization popularly known as the Defenders. It is the Defenders of State Sovereignty and Individual Liberties.

I personally am not familiar, I don't recall, but if counsel says we have done work on the Seaboard White Citizens Council I assume he is correct. I don't have that recollection in mind right at this minute.

Q. Do you know, and I will be perfectly happy to have Mr. Hall state this—I have no desire to be technical—whether any witness was called in connection with the Seaboard White Citizens Council?

[fol. 32] A. I could not answer it myself.

Mr. Rauh: Mr. Hall volunteered the previous one; maybe he would volunteer the answer to this one.

Mr. Hall: The answer is, no.

Mr. Rauh: No witness was called from the Seaboard White Citizens Council?

Mr. Hall: We had sufficient information to indicate that they had not taken part in any racial litigation.

Mr. Rauh: So no witness was called?

Mr. Hall: That is right.

By Mr. Rauh:

Q. With respect to, was it the Defenders, Mr. Thomson——

A. That is right.

Q. —How many witnesses were called in regard to the activities of the Defenders?

A. To the best of my recollection, only one, Mr. Rauh, was called in Richmond, produced all the records, information, that we requested of the Defenders and we have not had occasion, though we have checked that information, we have not had occasion to call other witnesses.

Q. How many witnesses were called in respect to the several different parts of the NAACP organization, Mr. Thomson?

A. Members of the NAACP?

Q. No. How many witnesses were called in relation to [fol. 33] your efforts to obtain information with regard to these three NAACP organizations?

A. Certainly it would be around one hundred, I feel certain. I couldn't possibly give it to you any closer than that; I am not saying that is correct.

Q. That is perfectly satisfactory, sir.

Does your Committee's investigation overlap that of the so-called Boatwright Committee?

A. I don't know whether you want to talk about the legalities of it, the technicalities of the bills. You mean in fact?

Q. I would take it any way you care to answer my question.

A. In fact, we do not. We have a joint member of both Committees and we have, through his efforts, been able to prevent the duplication of work by either committee.

Q. Well, I am not clear on this, Mr. Thomson; I would like to be. Am I correct when I say that the Boatwright Committee was authorized and directed to specifically direct its attention to the administration and enforcement of those laws relating to champerty, maintenance, barratry, running and capping and other offenses of any other nature relating to the promotion or support of litigation by persons who are not parties thereto?

That is, am I not correct, that is the Boatwright Com-
[fol. 34] mittee's authority?

A. If it appears in the Act, that is it.

Q. I will show it to you and ask you if I was correct.

Mr. Hall: Chapter 34, I assume you are reading from?

Mr. Rauh: Yes, I was.

The Witness: Chapter 34, that is it.

By Mr. Rauh:

Q. And your resolution is Chapter thirty——

A. —seven

Q. Provides for an investigation of whether the laws of barratry, champerty, and maintenance are being violated in connection therewith, does it not?

A. It does.

Q. Now, on their face, would you agree with me that those appear to overlap?

A. To some extent they do, but obviously our Committee has the authority to go back before the statutes of 1956 were enacted into the common law offenses which the Boatwright Committee did not have.

Q. Would you please explain that a little more? I didn't get it, Mr. Thomson.

A. I said, one distinction is that there is no limitation on the provision under which we can act. We could go back before the statutes in the 1956 special session were adopted [fol. 35] into the common law offenses, those offenses that took place prior to 1956, whereas, I believe, the Boatwright Committee in theory would be restricted to investigating violations of the 1956 Acts. We would likewise have that authority, too.

Q. Well, now, has some arrangement been made with the Boatwright Committee so that you take a part of this area and they take a part of this area?

A. No, but we have prevented ourselves, one has done something, from duplicating that service.

Q. Is it not a fact that the Boatwright Committee has subpoenaed all the records of the National Association for the Advancement of Colored People and that a case is now pending in the Supreme Court of Appeals of Virginia raising the question as to their authority to do just that?

A. The authority to do what, Mr. Rauh?

Q. To get at the records of the NAACP.

A. That is correct; that is my understanding. I have never been in the suit or I do not think I have ever even seen the pleadings, but that is my understanding of it.

Q. The Boatwright Committee subpoenaed in this case, Mr. Thomson, the names and addresses of the principal officers of the Virginia State Conference of NAACP Branches, and also the names and addresses of the agents, servants, and employees, officers and volunteer workers and associates through whom such Conference carries on its [fol. 36] activities in the Commonwealth of Virginia, and also the names of its members in the Commonwealth of Virginia, together with the last known addresses of all of the above-designated persons.

Isn't that an overlap of what you are doing, Mr. Thomson?

A. I don't think it is an overlap. We are not doing the work at all in that regard. The Boatwright Committee has undertaken to do it; we didn't file such a suit for that reason. We would have filed a suit had they not done so, or rather, we would have served a subpoena which would have brought about the court test that is under way had the Boatwright Committee not done it.

Q. Would it be fair to say, just to try to conclude this, would it be fair to say that where your jurisdiction does overlap in regard to the National Association for the Advancement of Colored People, but that you have, neither party, neither committee has gone into a specific area of the NAACP where the other one has already acted. Is that a fair statement of the situation?

A. If you will re-state that for me, I will answer it. I am sorry I didn't get it.

Mr. Hall: That is not true.

Mr. Rauh: Mr. Hall——

Mr. Hall: I don't mean to testify, but I have to straighten you out on that. If you want me to testify, I will.

[fol. 37] Mr. Rauh: You made the statement. I didn't

object to your first interruption but I would now ask that it not be continued, please.

Mr. Hall: I apologize.

By Mr. Rauh:

Q. Would it be a fair statement, Mr. Thomson, to say that the Boatwright and Thomson Committees' jurisdiction does overlap with regard to the National Association for the Advancement of Colored People but that both committees have avoided asking for duplicate information once one Committee has asked for it?

A. I don't think that is a fair statement.

Q. Would you straighten me out?

A. I have already stated it for the record but I will repeat it again:

That in those areas—strike that; just a minute.

Go back to the original purpose of the Act. The Boatwright Committee has the same authority we have to investigate on those violations of champerty, barratry, and maintenance since 1956. We have authority going back all the way into the common law offenses.

Now, in those areas where there is an obvious overlap the Committees have not duplicated the work, but where they have gone into one phase of the investigation, we have [fol. 38] not followed behind that, called the same people and adduced the same testimony.

Q. Have previous investigating committees of the Virginia Legislature been given a subpoena power?

A. To the best of my knowledge this is the first legislative investigating committee operating outside of the regular session or a session of the Legislature ever created in Virginia.

Q. What was the subject under inquiry, Mr. Thomson, when Mr. Scull testified before your Committee?

A. The matters as set forth in the record. The questions are readily discernible from the transcript which you have, sir.

Q. I am not now asking you, sir, what the questions were. I call your attention to the Watkins Case in the Supreme Court where Chief Justice Warren referred to a "subject

under inquiry that must be stated to a witness," and I ask you what was the subject under inquiry at the time that you had Mr. Scull before you?

A. It is very multiple, obviously, Mr. Rauh. It is not any one specific thing. I think you will recall one question in there as to whether or not he had paid any court costs or counsel's fees in regard to any of the racial suits brought in Virginia—a very obvious purpose: Whether or not he is financing those suits.

[fol. 39] Likewise, when we asked him in regard to these organizations, we were trying to determine through his testimony whether in fact those organizations are racial in character, whether at a future time the Legislature might wish to authorize an investigation of those subjects.

We have been narrowly confined to the subjects which we have been able to cover both by the limited staff which we have, and the pressing fact that each member of the General Assembly has to earn his own living apart from representing the General Assembly, and we have not been able to cover many facets of the investigation which I am sure many of the members of the Committee feel should have been done.

Q. Mr. Thomson, I believe you stated that the hearings —well, strike that, please, Mr. Reporter.

I call your attention to page 4 of the hearing at which you stated what I understood you then to refer to as the subject under inquiry, and you said, "Several."

You said, "Several which primarily do not deal with you," meaning Mr. Scull.

Now, would you tell me what you mean by the phrase "Several which primarily do not deal with you"?

A. When I was speaking about the subjects under inquiry, I was specifically designating those three which are set out in the bill, several of which do not deal with him.

[fol. 40] Q. Would you go through those three and tell me which ones do not deal with Mr. Scull?

A. For my personal standpoint, I would say that the one dealing with the taxable status does not affect him here, and likewise the one—I have forgotten whether I stated it or not, but I would think that the integration or

the threat of integration on public school systems, on the general welfare, would apply.

Looking at it in retrospect, the other on champerty, barratry, and maintenance would not apply. I don't recall whether I did say or did not say. We did specifically with the third one: Champerty, barratry, and maintenance.

Q. Will you look at page 4 of the transcript there, Mr. Thomson, and tell me which of the things you referred to as the subjects under inquiry you now say you were referring to as those which primarily didn't apply to Mr. Scull, which of those primarily didn't apply to Scull?

A. You mean as appears from the transcript?

Q. Yes.

A. I prefer to let the transcript speak for itself on that.

Q. Is it your testimony now that you don't remember what you meant when you said, "Several which primarily do not deal with Mr. Scull"?

A. It is not a question of recollection or not recollection. [fol. 41] The record, I think, is perfectly clear on its face that if there is ambiguity, I will be glad to try to clear it up for you, but I think I thoroughly stated the proposition there on page 4.

Q. Is it correct, Mr. Thomson, that you referred to three different possible subjects under inquiry on page 4?

A. That is correct.

Q. Now, is it also correct that you said several which primarily do not deal with you?

A. If the transcript says it there, I said it.

Q. Which of those three were you referring to when you said, "Several which primarily do not deal with you"?

A. I think it is the last mentioned there.

Q. Would you just state for the record so that it is clear on the record which ones you were referring to that did not deal with Mr. Scull?

A. The violation of those statutes dealing with champerty, barratry, and maintenance, and general unauthorized practice of the law.

Q. Those did not deal with Mr. Scull?

A. No, no; I think in the connection that we are dealing with here, that the ones spoken of first did not apply; only the latter one did apply that I was making.

Q. I have misunderstood you now. It is only the latter one which applies? The first two do not?

[fol. 42] A. To this section of the testimony, to this section of the testimony.

Q. To Mr. Scull's testimony?

A. No, to that section of Mr. Scull's testimony.

Q. Now I am confused.

Mr. Hall: May it please the Court, I want to object to all this because he has gone over it time and time again. The transcript is perfectly clear on it; it is just a quibbling over words, now. I think the Court can read that and tell very well what was meant and what the purpose of the inquiry was at that time.

The Court: The objection is overruled. Go ahead.

Mr. Rauh: Thank you, Your Honor.

By Mr. Rauh:

Q. Now, Mr. Thomson, what did you just mean when you referred to "that section of Mr. Scull's testimony." What section of Mr. Scull's testimony?

A. The section of the testimony you are referring to right there, Mr. Rauh.

Q. You mean the full transcript?

A. No, I do not mean the full transcript.

Q. What part of the testimony are you referring to? There are eighteen pages here.

Will you designate the part you are referring to?

A. All right; it will take me a few minutes but I will [fol. 43] be glad to do it for you.

I can answer your question now, Mr. Rauh.

Q. Please do, Mr. Thomson.

A. At the time that this matter came on, Mr. Scull had already indicated he was not going to answer any questions at all, didn't make any difference what we asked him. So, as a practical matter, we set up the procedure. I advised him of the three matters under investigation. It was not a question of excluding one or the other at the time, but we were merely setting forth that he was advised of the three matters which were under investigation, and that in each instance he would just answer that he was

refusing to answer the question on the ground, on the basis of the statement.

I would retract what I said formerly. The whole statement would be applicable to the entire transcript and the fact that he was advised of each one of them would be applicable to the entire transcript.

Q. Now, will you explain to me exactly as you can how it was pertinent to the subject under inquiry which you have indicated whether—and I now refer to page 14 of the transcript—one Warren D. Quenstedt used post office box 218?

A. Would you care to let me see the question?

It was pertinent only insofar as that general brochure was concerned, insofar as I think each of the organizations, [fol. 44] individuals, listed in that brochure; it was requested that the witness identify first of all whether or not he had used the box. Then it would have followed, what was the purpose of him using the box.

Q. What difference does it make whether Warren D. Quenstedt used post office box No. 218, Mr. Thomson, as far as racial activities in Virginia are concerned?

A. It would not, unless he was engaged in that; that was the purpose to make a determination on, Mr. Rauh.

Q. You were trying to find out whether Warren D. Quenstedt, candidate for Congress, was engaging in racial activities? Is that what you were trying to find out?

A. It is kind of a peculiar place for a candidate to find himself, with people using the same box. I would like to know whether he was connected or wasn't. I don't say he was or wasn't. We just merely want to check out the information.

Q. Can you tell me exactly how the question: "Has the National Conference of Christians and Jews used that box number?" is pertinent to the question, to the subject under inquiry?

A. In two ways:

First of all, if he were a member, assuming he answered in the affirmative, we would have asked him if it was a racial organization. I do not happen to know, myself. If

[fol. 45] it is a racial organization, it would have been a matter itself for further inquiry.

Q. You don't know whether the National Conference of Christians and Jews is a racial organization, Mr. Thomson?

A. No, sir, I know nothing about it, to be very frank with you.

Q. How about—you asked the same question about the B'Nai Brith. Do you know whether that is a racial organization?

A. No, I do not; I know nothing about it, likewise.

Q. What was the Save Our Schools Committee that you asked about on page 14, Mr. Thomson?

A. I think, if I am correct, the Committee asked that question, but nonetheless the relevancy was the same as I stated before. It was information adduced from the brochure that was merely checking the——

Q. You have no information about the Save Our Schools Committee except what came from the brochure, Mr. Thomson?

A. I can't say I have a considerable amount of information. I was involved in a campaign on re-election with the Save Our Schools Committee on opposite sides.

Q. So you do have information about the Save Our Schools Committee, Mr. Thomson, other than what came from the brochure?

[fol. 46] A. Generally speaking, I couldn't say that I didn't. I made it a purpose of attending one meeting in Alexandria. I am quite familiar with the group there.

Q. Come now, Mr. Thomson; isn't it a fact that the question was asked on the Save Our Schools Committee to embarrass your own political opponent, Mr. Smoot?

A. This didn't take place until after the election was over, sir. The gentleman goes to my church. He is a Senior Warden there. I certainly have no intention of attempting to embarrass him. He has been a very gracious opponent. In fact, he lost a very hard fought campaign and a very bitter one, too, I might add.

Q. Have you prepared your report, Mr. Thomson?

A. No.

Q. You haven't started your report yet?

A. No, sir. I say I have not started it. If the Committee counsel has started, already started it, I am not aware of it.

Q. As far as you are aware, you have not started a report at this moment?

A. No, sir; and wouldn't until after the determination of this case.

Q. How many witnesses have you had, Mr. Thomson?

A. Approximately one hundred.

Q. You had about one hundred witnesses, but you can't [fol. 47] start your report until you have Mr. Scull's, is that your testimony?

A. Certainly we can start the report. There isn't any question about that. I think in all fairness before you start writing up a report you ought to complete all your investigation. We could start some phases of it, the tax phase of the investigation could be written up tomorrow. Just a matter of when the Committee counsel gets a chance to start on it. We have only one lawyer.

Q. Did you at any time at the hearing indicate to Mr. Scull that these were preliminary questions? And that you had some other questions that you were going to ask if he answered them?

A. The record will have to speak for itself on that, Mr. Rauh.

Q. Is it not a fact that you did not, Mr. Thomson?

A. If it didn't show in the record, I did not.

Mr. Rauh: If Your Honor please, I am almost finished. I would like to take some clippings that we have here and determine whether in fact, because they are relevant to this problem, Mr. Scull, Mr. Thomson did in fact make the statements attributed to him. I should not think it would take very long to ask these questions.

By Mr. Rauh:

Q. Did you, during the course of the legislative battle [fol. 48] over this set of bills, Mr. Thomson, state that, "We can bust that organization," meaning the NAACP, "wide open"?

A. That is very correct. I said it before the Senate Committee that was considering the bill at the time and

I said it based on the fact that I had information at that time that the NAACP had been illegally financing suits.

Q. Did you, as reported at that same time, state that your Committee investigation will be "devastating" to the National Association for the Advancement of Colored People?

A. I don't recollect that, but it is perfectly possible that I did make it, Mr. Rauh. I remember making the other one. It has been a constant source of inquiry and publicity.

Q. I will show you the Washington Star for 8 July 57 and ask you if this refreshes your recollection with regard to my question.

A. I am certain if it wasn't exactly that statement it was one very close to it based on the information we had already adduced in the Committee.

I made a release, I think after the hearing in Farmville, in which I stated that on that information alone I think the NAACP could be found guilty of the unauthorized practice of the law and would be barred from the State of Virginia.

Q. Along the same lines, Mr. Thomson, do you recall stating, in August of '57, that the Committee's information [fol. 49] could be used to keep the NAACP out of litigation which is "the heart of the organization"?

A. I remember making a statement somewhat similar to that. I don't recall the exact terms, but I do recall issuing a release which was similar to one I spoke of in Arlington,—I mean in Farmville—I think that was in regard to the Arlington hearing, was it not? I have forgotten the date.

Q. August 7, 1957. Which hearing would that be in regard to, Mr. Thomson?

A. August 7?

Q. Comes out of Richmond. That was probably at another hearing.

A. No, we have not had a hearing in Richmond in——

Q. I show you the clipping and ask you if this will refresh your recollection about that statement, Mr. Thomson?

A. Yes, I do recall this: I had originally made the statement in Farmville and it received practically no publication or circulation at all.

Then I remember I was talking to one of the reporters in Richmond and I made this statement which evidently he didn't get hold of. He thought it was a new story and he printed it and ran it just as if it had never happned (sic) in Farmville.

Q. Would I do you a disservice, Mr. Thomson, if I asked [fol. 50] you whether it would be fair to describe you as the leading supporter of segregated schools in Northern Virginia?

A. I think you could fairly say it as far as elected officials are concerned.

Mr. Rauh: No further questions, Your Honor.

Mr. Hall: I have no further questions.

The Court: Let's take a ten-minute recess.

(Whereupon, a 10-minute recess was taken.)

The Court: Do you have anything further?

Mr. Hall: That is all the evidence for the Committee, Your Honor.

Mr. Rauh: We have no witnesses, if Your Honor please. We would like to be heard at the Court's convenience, both on the petition and the motion to quash.

The Court: How much time do you want?

Mr. Rauh: I haven't heard Mr. Hall's eloquent presentation, but I would assume that half an hour should be enough for our side.

The Court: So that we don't have any break in the argument, the Court will recess until 1:30 and we will hear your argument at that time.

Mr. Rauh: May we submit at this time a memorandum we prepared last night? Possibly Your Honor would glance over that at the recess and I will serve a copy. It does [fol. 51] not contain all the arguments we would use this afternoon but it contains them as of the time we came to Court, Your Honor.

(Whereupon, at 12 o'clock noon, the hearing was recessed until 1:30 o'clock p.m., of the same day.)

AFTERNOON SESSION

Mr. Hall: May it please the Court, if I may do so, I would like to waive opening argument and reserve the right to close.

The Court: I suppose it does not make any particular difference.

Mr. Rauh: No, sir.

CLOSING ARGUMENT BY MR. RAUH

Mr. Rauh: If Your Honor please, we have, I guess, ten reasons for why the petition should not be granted and, to put it the other way, why the motion should although I might say at the outset that Your Honor might not need to act on the motion. That is, if Your Honor finds that the petitioner, as we will urge, has not met the burden of showing why this defendant, this witness should be forced to answer. I would assume that the petition would be denied without regard to the motion. In other words, they are not completely identical considerations.

In the motion to quash, I don't know where the burden [fol. 52] would lie, necessarily. Certainly, on their petition, of the Committee, certainly on that the burden to show their need for the information and the pertinence of it to the subject of their inquiry is clearly with the petitioners.

My feeling might be that if Your Honor feels, believes that we are correct in denying the petition, it may not be necessary to rule on the motion. I just make that in terms of preliminary remarks.

Now, the first argument we contend against the petition and in support of the motion is that the questions asked Mr. Scull are not within the authority of the authorizing statutory resolution in H. 65 which is Chapter 37.

What the Committee is authorized to investigate is groups seeking to influence, encourage, or promote litigation relating to racial activities.

The Committee has arrogated to itself a right to investigate all racial activities.

It does seem to us that the questions, while it might fall in the broader category of all racial activities, certainly

do not fall in the narrower category of racial aetivities, of litigation in support of racial activities.

If Your Honor please, I would not make this point so strenuously were it not for the fact that it is only by so ruling that Your Honor avoids the grace (sic) constitutional questions which we have here presented and will [fol. 53] present in argument.

It is a well established rule of adjudication that wherever possible these great constitutional issues should be avoided and the decision placed on the narrowest ground.

We would call to Your Honor's attention the narrow ground that is possible.

The second ground of the ten we propose is that the petitioners have not met their burden of proving why they needed this information from the witness.

The testimony you heard this morning from Mr. Thomson gave no legislative need for this information.

When I asked him, for example, why he had to know whether a candidate for Congress, Mr. Quenstedt, used this box, he said it was to find out whether that Shocking Truth document before you was correct.

I don't think it makes much difference whether the document is correct or not.

It would only make a difference if Mr. Quenstedt's activities were such that they were related to litigation in support of racial activities.

When I asked Mr. Thomson what about the B'Nai Brith and the Conference of Christians and Jews, he said he didn't know what the organizations were.

These questions were not asked in order to get any information. They have met no burden and we submit that [fol. 54] their petition fails.

As the third ground of denying the petition and granting the motion, we suggest that there has been a failure of due process of law.

If Your Honor please, I don't think it makes any difference whether Mr. Scull raised the 14th amendment before the Committee or not, but he did. The entire statement which was put in as their Exhibit No. 2, I believe, and which is also in the transcript, pages 5 to 5-C, is a statement of Mr. Scull's philosophy in almost the language of the 14th

amendment and he ends up saying: For all of the foregoing reasons and on the basis of all the rights accorded me under sections 8, 11, and 12 of the Constitution of the Commonwealth of Virginia, and the co-relative provisions of the Federal Constitution, by that statement Mr. Scull clearly raised the 14th amendment but I say it doesn't make any difference because we can raise it here.

Mr. Scull hasn't answered yet.

Any contentions we make here Your Honor has a right, indeed the duty, to consider before directing the answer.

So the 14th amendment is before Your Honor and of course it prevents any state authority, including a legislative committee, from denying a man liberty without due process of law.

Now, we say to Your Honor that this Committee's action [fol. 55] was arbitrary and capricious and therefore a denial of due process.

You heard Mr. Thomson say that they had published no rules. In fact, when they made—they only made two rules, none of them having anything to do with procedure. One said that there would be a quorum, would be three, and the other rule said they would have a transcription of the testimony.

To use compulsory process, to subpoena a man before a committee without rules, is a violatic due process of law; but what is worse, is to subpoena him on the basis of an anonymous phone call and information.

I showed Mr. Thomson the documents that he had referred to, the Shocking Truth, and I asked him who put it out. He says, Well, let me see it, and he read from it.

The Fairfax Citizens Council—I asked him what that organization was—he said he didn't know.

We say to subpoena a man before a committee on the basis of information put out by somebody that the investigators didn't even know who they were, to subpoena him before a committee where they don't even have any rules of procedure—well, if Your Honor please, that in our judgment is a violation of due process.

It is the procedures of this committee that resulted in what we might call the hundred-to-one ratio of action of [fol. 56] this committee.

Your Honor heard Mr. Thomson quite frankly say, Oh, we had one hundred witnesses from NAACP and we had one from the Defenders.

Of course, that is what you get if you are going to take anonymous phone calls and anonymous documents, Your Honor. That is no way to run a committee.

There is nothing wrong with legislative investigative committees. Legislative investigating committees have been an important part of the building of this country. The Teapot Dome scandal is an example of a magnificent job done by a legislative investigating committee.

Some of the other works, Senator Russell's investigation of the General MacArthur position was an important and significant investigation. But all of these committees have operated with careful rules, with careful scrutiny of their subpoenas, with careful effort to protect the rights of others, and it is the departure by this committee from that very significant history of legislative investigations that constitutes the wrong here.

Now, if Your Honor please, turning to the points raised in the memorandum in support of the motion to quash, and those points which I have renumbered to keep the order correct, 4 to 10, point A being 4, and so forth, that point A is referred to in our memorandum, sir, at page 8, and we [fol. 57] turn now to our fourth point, which is: The Thomson Committee was established and given investigative authority as part of a legislative program of "massive resistance" to the United States Constitution and the Supreme Court's desegregation decisions in order to harass, vilify, and publicly embarrass members of the NAACP and others who are attempting to secure integrated public schooling in Virginia.

It is our position that Mr. Thomson's testimony this morning made clear, as he himself quite gentlemanly and forthrightly said, the purpose was to "bust the NAACP wide open."

That is a policy of massive resistance, I agree, but a legislative committee has no power to engage in massive resistance to the decisions of the Supreme Court by busting wide open the organization which has urged those decisions and which now seeks to implement them.

As the next point, if Your Honor please, the fifth point, the purpose and effect of the inquiries of the Thomson Committee, including those addressed to the movant, is denial of access to the courts for vindication of constitutional rights by harassment and exposure of school integration plaintiffs and members of the organization which is most actively engaged in litigating the integration suits.

Access to the Federal courts and to the State courts, if Your Honor please—but I guess even more clearly access to the Federal Courts—is a constitutional right.

[fol. 58] The cases cited at page 9 of our memorandum make this clear.

For example, in the Terral case, the first one cited on page 9, the State sought to make it a condition of a foreign corporation doing business that it waive its rights to go into the Federal courts. The Supreme Court by Mr. Chief Justice Taft made perfectly clear that this could not be done.

The right to go to the courts, Federal and State, is a Federal right.

And, Your Honor, I do not suppose I need say this—Your Honor is bound by the Federal Constitution under Article VI as much as by the State Constitution under the appropriate section of the Virginia Constitution.

I do not think there is any question that Mr. Thomson made it clear. Mr. Thomson was not a difficult witness. Mr. Thomson made his position perfectly clear this morning. He wanted to stop this NAACP from all this litigating. He was perfectly honest and forthright about it. That was his purpose. He wants to stop the NAACP from litigating in the courts of Virginia, Federal and State, and he used this as a method of accomplishing that.

That is a purpose, if Your Honor please, we say with all seriousness and certainty, that that is a purpose which a legislative committee may not engage in.

[fol. 59] Now, if Your Honor please, as argument number six we call your attention to the important cases just decided by the Supreme Court.

Our ground for denying the petition and granting the motion to quash is that the inquiries addressed to movant violate his rights of free speech, assembly, and petition

because they repress freedom of expression and constitute an unjustified intrusion into and restraint upon his association with others in legal and laudable political and humanitarian causes.

Now, if Your Honor please, the Supreme Court, on June 17, 1957, decided two cases that we believe are dispositive of the matter at hand today.

In the Watkins case, decided on that date, the Court held that the House Un-American Activities Committee could not force answers to a number of questions. In the course of this, Chief Justice Warren, speaking for a substantially unanimous Court—there was one dissent, if Your Honor please—said the following:

"A far more difficult task evolved from the claim by witnesses that the Committee's interrogations were infringements upon the freedoms of the 1st Amendment. Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech, or press or assembly. While it is true that there is no statute [fol. 60] to be reviewed and that an investigation is not a law, nevertheless an investigation is part of law making. It is justified solely as an adjunct to the legislative process.

"The 1st Amendment may be invoked against the infringement of the protected freedoms by law or by law making. Abuses of the investigate process may imperceptibly lead to abridgement of protective freedoms. The mere summoning of a witness and compelling him to testify against his will about his beliefs, expressions, or associations, is a measure of governmental interference. And when those forced revelations concerning matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous."

In other words, I don't think the Chief Justice, he was not thinking about Mr. Scull, but I don't think he could have written anything more clearly applicable: Calling a man, summoning him under compulsoty (sic) process to answer questions in an area of, shall we say, tension, to use what we might use the most understated way, to call a man and discuss his associations in this area of tension, whether it be here, the tension in Virginia, the tension

over racial integration, or whether it be as in the Watkins case, the tension over past communist associations.

Where a man is summoned under compulsory process to give testimony in an area of public tension, this has a [fol. 61] repressive effect upon that man and upon others.

I would say, if Your Honor please, that Mr. Scull has done a public service, whatever may be the outcome of this case, in making possible a legal decision on this very question because too many others, either because of the repressive nature of the action, fear that they will get more publicity out of fighting it—too many others just take the easy way out.

This has not been an easy way out from Mr. Scull but I think that whatever may be the outcome, I hope Your Honor will feel, as we do, that great Americans have raised serious problems of our Constitution for the very purpose that others may share the liberties that they have won that way.

Certainly, in Virginia, where so many of our liberties started, an effort by a citizen of Virginia to protect those liberties ought to be given the most serious and thoughtful consideration.

I would say that Chief Justice Warren has laid the basis here for our first amendment claim. By "first amendment" I would like to make clear that I mean here the 14th because, of course, the first amendment is incorporated in the Supreme Court's decision in the 14th. That is, wherever the Supreme Court has knocked out, has invalidated a state law repressing freedom of speech, they have done so [fol. 62] under the 14th Amendment, interpreting the 14th Amendment as covering the 1st Amendment, so that the Chief Justice's reference to the 1st Amendment seems quite clearly, if Your Honor please, to cover the 14th amendment as it would apply.

One does not need to speculate about this because of the case decided the same day in Sweezy vs. New Hampshire. In that case, if Your Honor please, a man was called before a State investigating agency and asked some questions about his Progressive Party activities and those of his wife.

The Supreme Court said that these could not be asked, by a seven-to-two decision, that was. During the course of this, Mr. Chief Justice Warren in language also related to our situation at hand said as follows:

"There is no doubt that legislative investigations, whether on a Federal or State level, are capable of encroaching upon the constitutional liberties of individuals. It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas."

Now, if Your Honor please, what we have here is clearly a violation of freedom of speech and of the press under the Watkins and Sweezy decisions by an effort to embarrass the witness and thereby further the policy so [fol. 63] eloquently stated by Mr. Thomson, but so equally unlawful as it is eloquent, to use this committee to "bust the National Association for the Advancement of Colored People wide open."

Here, as our seventh reason, if Your Honor please, we state as follows:

The demand for answers made upon movant by the Thomson Committee is arbitrary and unreasonable inasmuch as there is no justification for the special and selective investigatory authority granted to the Thomson Committee, and nothing in that authority renders pertinent the demand made upon movant to disclose his civic and political associations and activities.

What we have here was a selective choice of an organization that had fought for human rights, a choice of that organization as subject of attack with a small piece of window dressing on the side.

I asked, if Your Honor will recall, I asked Mr. Thomson what other organizations besides the three branches, the three different departments of the NAACP, they had investigated and he referred to the Defenders, and then Mr. Hall volunteered the Seaboard Citizens Council, what Mr. Thomson quickly said he didn't know about that, and be-

sides, Mr. Hall said, they hadn't had any witnesses from that organization.

I asked Mr. Thomson how many witnesses did you have [fol. 64] from the Defenders and he said, one. I asked him how many he had had from NAACP and he said one hundred, and that states our case perfectly.

If Your Honor please, this was a one hundred-to-one committee. That is as good a name for them as any other and I say it with all deference.

This was a one hundred-to-one committee. This was a committee that wanted one hundred times to get at the NAACP and used that little one for window dressing to give some idea that this was not selective. This was a clearly selective and arbitrary effort to hurt an organization who sought by access to the court, legal access to the courts, to do what they thought was right and what the Supreme Court had upheld.

As the eighth argument, if Your Honor please, the Thomson Committee's authorizing resolution is too vague and inprecise to justify compelled testimonial disclosures.

If Your Honor will examine the Watkins and the Sweezy cases, you will find that that theme runs through both of them. I think more than any other theme running through these two decisions is the demand that investigating committees have very precise and exact limitations for various reasons:

First, that the man may know exactly what the scope of inquiry is;

Secondly, so that the legislative committee, so that the [fol. 65] legislature—not the legislative committee—so that the legislature can control the committee, so that any time the committee is acting it is clear that it is acting as the arm of the legislature.

When you get these broad, inprecise resolutions, the Committee may be delving into fields where the legislature would not have it go. That is what the Supreme Court was saying in the Watkins and Sweezy cases when it said that the legislature must keep control. It must give narrow, precise areas of investigation.

What do we have here? We have the broadest type of resolution and I say this: If Your Honor rejects our first point there would be a possibility of giving it a narrow construction. I urge that. I urge that it be a narrow construction, sufficiently narrow to exclude Mr. Scull's questions.

Once Your Honor leaves that narrow construction, what is the authority for this committee? Racial integration, a field as broad and inprecise as the whole problem of life in the South today.

There is no area of southern life today or, as a matter of fact, there is no area of life today where racial integration is not involved. It is not just here. Racial integration creates problems in the big cities of the North just as much, and what we have here, what we are suggesting, what [fol. 66] Mr. Thomson's committee does, what Mr. Hall will suggest to you, that it is all right to set up a legislative committee and just say, go after any aspect of racial integration.

I say to Your Honor that is as broad and inprecise as life itself and I cannot in any way see how it can serve as a basis of action by the committee.

Here it was worse. Bad as that may sound, it was worse. They set up two committees to do the same thing. Mr. Thomson was very frank about that. What he in essence said was the Boatwright Committee and our Committee do overlap. The way we avoid any real problems is that the one that gets there first gets the fellow. That is a colloquial way of putting what he testified to but I don't think it is inaccurate. He said, when one of us goes after a witness or a set of records, then the other one leaves it alone. That is certainly a strange way for defining boundaries for committee action, to have two committees with vaguely overlapping jurisdiction, and the one that gets there first gets the witness.

I don't believe that there can be any suggestion that that meets the standards which Chief Justice Warren set up in Watkins and Sweezy.

As our ninth ground, and I am coming to a conclusion—I hope to make that half hour, within the half hour I promised Your Honor—I believe about three minutes are

[fol. 67] left on the half hour, sir—On item nine the committee failed, despite proper inquiry made by movant, to inform him in what respect the questions were—I would say to Your Honor that not only did the Committee fail to inform him, but I have been here all morning and I inquired from Mr. Thomson, and if my life depended on it I couldn't tell Mr. Scull what the subjects are, what the subject of the inquiry was, or why he had to give those answers.

Even after being in the court room all morning, having tried to elicit a clear-cut subject under inquiry from Mr. Thomson, I failed to do so and I couldn't right now say, if I had to give the testimony, whether or what the subject under inquiry was, or why this was pertinent.

Finally, as out (sic) tenth argument, I would say that the ground for dismissal that the information sought from movant was neither intended to nor could reliably be expected to assist the legislature in any proper legislative function.

We haven't had a word about legislation. Strangely enough, the closest thing we have had today about any future action of the legislature was the suggestion by Mr. Thomson that if he got a lot of information now maybe they would continue his committee at the next session of the legislature. I don't think it is a proper purpose of the legislative investigating committee to dig up information for the purpose of continuing its life.

[fol. 68] May I just conclude with this, if Your Honor please? I have dwelt on it before, but I think it is something that I think I would like to repeat, and that is that particularly here, in Virginia, where so much of the Bill of Rights was started, and it is my understanding that the Federal Bill of Rights is taken from the Virginia Bill of Rights, where so much was done by people resisting tyrannical authority, Your Honor, that ought to look on Mr. Scull, whatever may be the legal aspects—and on me, I am sure Your Honor will give careful consideration—that Your Honor should look on Mr. Scull as one who seeks in a proper tradition—indeed a Virginia tradition—to assert the liberties of all by resisting what he believes tyrannical abuse of compulsory process; that whatever may be the

outcome and whatever may be Your Honor's decision, and we believe we have given sound reason why it should be in our favor, we ask you to consider the sincerity and devotion to public principle that caused the defendant, caused the witness here, to take that position.

Thank you.

The Court: Mr. Hall.

STATEMENT IN REBUTTAL BY MR. HALL

Mr. Hall: May it please the Court, I don't expect to take up the full half hour allotted to me, but there are some points here that I want to touch on and I think it is very important to present an oral argument on those points [fol. 69] even though I have submitted to the Court a written memorandum of authority upon which we rely.

I sat here and during the entire time of Mr. Rauh's argument was puzzled about his continual reference to what he calls the purpose of the Committee to put the NAACP out of business.

I don't know why he harped on that subject so much because nowhere in the testimony or in the argument of counsel, or anywhere else, has it been shown that Mr. Scull is connected with that organization which he claims is the target of the Committee.

He seems to be trying to protect the NAACP, apparently. Yet he has not shown he comes within the category of the very one he claims we are aiming at.

But be that as it may, I want now to address myself to the law involved in this case.

This is going to be rather repetitious because I have made a similar argument before Judge Hutchinson in the United States District Court for the Eastern District of Virginia, in Richmond, and also again before the three-judge court down there when the constitutionality of this Act and the Act creating the Boatwright Committee were contested by the NAACP and the NAACP Legal Defense and Educational Fund, Incorporated, in suit which those organizations filed against both Committees in an attempt to enjoin the committees from subpoenaing certain records.

[fol. 70] That case has been held in abeyance by the Federal Court pending a decision on the same matter in the State courts. The court refused to rule either on the power of the Committee to subpoena those records or on the power, on the constitutionality of the Acts creating the Committees.

Again, the same argument was made before Judge Flood in Farmville, Prince Edward County, and it was made before Judge Huntley in Richmond. Some of the same questions came up here before Judge Medley on one of the days that we were holding our hearings here in Arlington.

Adverting to the excuses given by Mr. Scull for his refusal to answer the questions put to him by the Committee, he questions the jurisdiction of the Committee and specifically relies on sections 8, 11, and 12 of the Virginia Constitution.

Then his motion to quash, which was filed yesterday, he also relies on the 14th Amendment to the United States Constitution.

Now, I think it goes without question that the authority of the Committee to conduct an inquiry leading to appropriate legislation is one of the things that has been part of the history of not only this Committee but the idea of investigating Committees was formulated in Parliament [fol. 71] long before this country came into existence. That same idea has been carried over into this country.

As was well said in State vs. Sims, a 1947 case, 130 West Virginia 430, and 43 Southeastern (2nd) 805, that case being annotated in 172 ALR 1389, the Legislature has inherent power to conduct investigations in aid of legislative action and to enable it to discharge its legislative functions and in so doing it may, within the limitations imposed by the Constitution, adopt any means which it deems necessary or appropriate, and may employ the usual and ordinary methods of procedure or proceed by any other duly constituted instrumentality.

That rule was again well stated in 9 ALR 1341, as follows, which cited one of the landmark cases on this subject, namely, Kilburn vs. Thompson, 103 U.S. 168, a case decided by the Supreme Court of the United States, that

the rule deductible from the authorities seems to be that the power of a legislature to investigate, through a committee or commission, the affairs of a private person, corporation, or institution, exists only when such affairs are directly related to the legitimate subject of legislation.

Now, that brings us to the consideration as to whether the investigation being conducted by the Committee are directly related to the legitimate subjects of the legislation. [fol. 72] If you will examine Chapter 37, which is the Act under which the Committee was created, you will find that the Committee was enjoined to conduct its investigations so as to collect evidence and information which shall be necessary or useful in, one, determining the need or lack of need for legislation which would assist in the investigation of such organizations, corporations, and associations relative to the State income tax laws;

Two, determining the need, or lack of need, for legislation redefining the taxable status of such corporations, associations, organizations, and other groups, as above referred to, and further defining the status of donations to such organizations or corporations, from a taxation standpoint; and

Three, determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty, and maintenance are being violated in connection therewith.

Now, certainly all of those purposes of the Committee are matters which can be the subject of appropriate legislation.

The General Assembly has the right to tax, to determine what objects shall be taxed. It has the right to determine what donations or contributions or other things may be [fol. 73] exempt from taxation.

It also has the right to legislate on the subject, and that right has been in existence for a long, long time, to legislate on the subject of barratry, champerty and maintenance and any punishment for violation of them.

We do not contend that this Committee has power to punish for violation of those laws. It would be beyond the

scope of the Committee to do it, but we do contend that the Committee has the right to gather information which may be helpful and useful to the General Assembly in determing (sic) whether further legislation along those lines is desirable.

Now, we have another case from West Virginia that went up to the United States Supreme Court and that was the case of Carfer vs. Caldwell, 26 Supreme Court 264; 200 U.S. 293, in which Chief Justice Fuller said:

"The committee was acting under a resolution of the House of Delegates, and in pursuance of a law of the State, giving power to committees of either House, authorizing to sit during recess, to enforce obedience to summonses issued by them; and if they did not have the power they assumed to exercise, it was because the resolution or law, or both, was or were repugnant to the State Constitutions, and the courts of the State are the appropriate tribunals for the vindication of the State constitutions and laws."

It was held in this case that the State constitution pro- [fol. 74] visions for separation of the legislative, executive, and judicial departments does not present any question under the due process laws of the 14th Amendment.

I mention that because of the fact that a great part of the memorandum that is filed here in support of the motion to quash the rule relies on the 14th Amendment to the Federal Constitution.

Now, Mr. Rauh mentioned the Teapot Dome scandal and the congressional investigations which brought about the prosecutions in those cases and in that connection I would like to cite to the Court the case of McGrain vs. Daugherty which is a case that grew directly out of the Teapot Dome investigations. That is U.S. Supreme Court case, 273 U.S. 135. It is annotated in 50 ALR at page 1.

Mr. Justice Van Devanter said, at page 324:

"In actual legislative practice, power to secure needed information by such means," that is, subpoena, "has long been treated as an atribute (sic) of the power to legislate. It was so regarded in the British Parliament and in the colonial legislatures before the American Revolution, and

a like view has prevailed and been carried into effect in both Houses of Congress and most of the State legislatures.

"A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and [fol. 75] where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed."

The (sic) we come to the latest expression of an opinion from the Supreme Court of the United States on the matter, in 1951. This is another case that is considered a landmark case, namely, Tenney vs. Brandhove. It went up from California. It is 341 U. S. 367.

Mr. Justice Frankfurter said in that case that "Investigations, whether by standing or special committees, are an established part of representative government. . . . The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province. To find that a committee's investigation has exceeded the bounds of legislative powers it must be obvious that there was a usurpation of functions exclusively vested in the judiciary or the executive. The present case does not present such a situation."

Now, I think that expression by the United States Supreme Court is very apropos in this particular instance because it is quite clear from reading the Act that the [fol. 76] sole and the only purpose of the Act and the functions of the Committee are to investigate these various things for the purpose of determining the need or lack of need for legislation along certain lines.

Now, that is purely a legislative function. It is not a usurpation of functions exclusively vested in the judiciary or the executive and it falls squarely within the case of Tenney vs. Brandhove.

Now, let me go to another phase of this problem.

[fol. 77] The respondent, Mr. Scull, relies upon Section 8 of the Virginia Constitution. That section provides, among

other things—it is a rather long section—that in criminal prosecutions a man has right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers; nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

It is assumed for the purpose of this argument that he takes the position that that part of Section 8 which deals with compelling a person to give evidence against himself has the same connotation as the Fifth Amendment to the United States Constitution.

In the first place, it might be well to point out here that nowhere in his resistance to the questions of the Committee has he attempted to avail himself of the provisions of the Fifth Amendment to the United States Constitution.

I might say that in some instances the State Courts have even gone so far as to construe this position to constitute a privilege which protects a person against self-incrimination from any disclosure sought by legal process against [fol. 78] him as a witness. So we won't belabor the point whether this is a criminal proceeding or not. But be that as it may, where the law gives to the witness full indemnity and assurance against any liability to prosecution for a disclosure he can be called upon to make as to his own implication or complicity in the unlawful act as to which he is sworn and called upon to testify, he is bound to answer and cannot shield himself under this section of the Constitution. That was so held in the case of Flanary versus Commonwealth, 113 Virginia 775; 75 Southeastern 289.

Now, with regard to this matter I would like to call to the attention of the Court that provision of Chapter 36 of the Acts of the Extra Session of the General Assembly for 1956. This same matter came up before Judge Medley when we were arguing for a rule against another witness, and it was there pointed out that Section 5 of Chapter 36 provides as follows:

"No person shall be excused for attending or testifying or producing evidence of any kind before a grand jury or before any court, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the provisions of this act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no person [fol. 79] shall be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction, matter or thing, concerning which he may be required to testify or produce evidence, documentary or otherwise, before the grand jury or court or in any cause or proceeding brought by the Commonwealth; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury in so testifying. Any person who shall neglect or refuse to so attend or testify, or to answer any lawful inquiry, or to produce books or other documentary evidence, if in his power to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for not more than one hundred eighty days, or by both such fine and imprisonment."

Now we go to the other things that he relied on. He relied next on the provisions of Section 11 of the Virginia Constitution which provides, and this is a short one, that:

"No person shall be deprived of his property without due process of law; and in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred."

It is difficult, if not impossible, for me to see where he thinks that he comes within the provisions of Section 11 [fol. 80] of the Virginia Constitution. There has been no attempt to deprive him of any property, whether by due process of law or otherwise, and this is not a suit or controversy between man and man where he is guaranteed a right to trial by jury. Certainly it was not within the contemplation of the framers of the Constitution that a person called before a legislative committee would be en-

titled to a trial by jury as such a witness is not in any sense put on trial but is merely called for the purpose of giving testimony which might be beneficial to the members of the General Assembly in considering appropriate legislation.

Now, as a further ground for his refusal to testify, the respondent relies upon the provisions of Section 12 of the Virginia Constitution. That section reads as follows:

"That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments; and any citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right."

Now, nowhere in the purposes of the Committee can it be found that the freedom of Mr. Scull to speak and write and publish his sentiments on any subject is being infringed. It seemed that he either had poor advice in selecting the sections of the Constitution upon which to rely, or else he is simply grasping at straws in a desperate effort to thwart [fol. 81] and delay the undoubted legal right of the Committee to make inquiries enjoined upon it by the General Assembly, knowing full well that this committee is required by law to furnish report to the Governor and General Assembly on or before November first, a matter only two weeks away. No other reasonable conclusion can be drawn except that the respondent either has something to hide or that he is only pursuing delaying tactics for the purpose of defeating the objects of the General Assembly.

In conclusion, on behalf of the Committee, I respectfully submit that the respondent should be required to answer all of the questions propounded to him by the Committee as well as any similar questions or questions related to the same subjects of inquiry.

STATEMENT IN REBUTTAL BY MR. RAUH

Mr. Rauh: May I have one moment?

Of course, it is always nice when you have made an argument under the 14th Amendment to have it answered under the 14th Amendment. Ninety percent of this argu-

ment has been addressed to three State Constitutional provisions that I did not mention in my address to Your Honor.

Three things I want to call to your attention. One is that we are not delaying. When I came into the case, I had to find out what it was about and we asked for the extra week. As far as I am concerned, we are here until Your Honor is ready to decide it. We have no desire to delay, [fol. 82] nor have we asked for any other than time to get ready. That point I don't understand—there was no testimony to it—why that suggestion should have been made.

Two points I do want to address myself to briefly were Mr. Hall's first statement and his omission. His first statement seemed to me that there is nothing in this case about the NAACP. There is nothing else in it, if Your Honor please, really. Mr. Thomson, Mr. Hall seemed to think there is some deficiency in the record about Mr. Scull being a member of the NAACP. Mr. Thomson corrected that. He testified this morning that Mr. Scull's name appears on the records of the NAACP.

Secondly, Mr. Thomson testified they had one hundred investigations of the NAACP and one of the Defenders. I don't suppose that they will seriously contend that Mr. Scull was called in connection with the investigation of the Defend (sic) Therefore, it seems to me that on Mr. Thomson's testimony we have to put Mr. Scull in the category of those who were called because of their connection with the NAACP.

Now, as to the omission, and with that I rest my case, we have been here since ten o'clock this morning. I have dwelled on the Watkins case and the Sweezy case. I have asked the witness, Thomson, about whether he followed that. I rely on those cases completely as fully settling this case. I quoted from them.

[fol. 83] What did we get in response? Other cases, old cases, irrelevant cases.

I have not heard in this court room this morning, either from the witness to whom I put the questions, or from Mr. Hall, the slightest attempt to distinguish Watkins and Sweezy. We call to your attention as most significant the fact that when we come to resist this petition, when we come with a motion to quash, the two decisions of the Supreme

Court squarely in point, Watkins and Sweezy are not only not mentioned by our opponents but they make not the slightest attempt to distinguish them. I only say to Your Honor they cannot distinguish them. They are completely in point and they require a denial of the petition of the committee and a granting of our motion to quash.

The Court: Mr. Rauh, do you have both of those cases in court?

Mr. Rauh: Yes, sir; I have both of them right here.

The Court: I would like to see them.

Mr. Rauh: I would be glad to loan this, if Your Honor please.

The Court: Have you got the place marked?

Mr. Rauh: The index has the reference to the two cases.

Mr. Hall: I would like to point out to The Court in that [fol. 84] connection that both of those cases cite the cases I referred to and do not overrule them.

STATEMENT BY THE COURT

The Court: Gentlemen, it seems to me that this case does not fall squarely within the findings in the Sweezy case or in the Watkins case. In both of those cases the legislative enactment was very broad indeed. The statute under consideration, it seems to me, points out definitely three areas of inquiry which the committee is authorized to make and they are with respect to determining the need or lack of need for legislation, which would assist in the investigation of such organizations, corporations, associations, relative to the state income tax laws. That is a definite subject of inquiry so far as the authorization to the Committee is concerned.

And concerning the need or lack of need for legislation redefining the taxable status of such corporations, associations, organizations, and other groups as above referred to and further defining the status of donations to such organizations or corporations from a taxation standpoint; and determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith...

The situation in this case is different in another aspect. [fol. 85] In this case the witness has declined to answer any questions of the Committee based primarily on his contention that the Act of the Legislature is unconstitutional. The attack today is on a broad ground that the authorization of the Legislature should be narrowed in its interpretation by the Court so that the witness is excluded from testifying. That contention will necessarily have to be rejected. The attack on the broad, constitutional ground is, of course, a very broad approach to the question of constitutionality of this Act in saying that the very purpose of the legislation is such that it renders the Act unconstitutional. The Court likewise rejects that contention.

Consideration of the questions asked by the committee shows that the questions are of a preliminary nature and in developing the inquiry to secure the information which the Committee is after appears to the Court to be perfectly proper line of inquiry.

The Court has concluded that the witness should be required to answer the questions propounded to him by the Committee.

That leaves the question of when the witness shall be required to appear before the Committee and answer.

Mr. Thomson: Your Honor, we are tentatively trying to set up a meeting of the Committee for the 18th which would be this Friday, sir. We are not able to confirm that [fol. 86] and I say we have a quorum of three we must have present. We do not have but two that indicate they can be present at that time. It is solely a matter that we haven't had a chance to call all of the members of the Committee yet. We would like to set it for the eighteenth.

The Court: Where?

Mr. Thomson: There again, Your Honor, we have made arrangements where we could have the third court room in the City of Alexandria. We could likewise make arrangements, I am certain, here in Arlington County if Your Honor would rather the Committee reconvene here. It is pretty difficult for us to set up a firm meeting, or was until we knew the outcome of the hearing today.

The Court: On the eighteenth?

Mr. Thomson: Yes, sir.

The Court: The Court will enter an order requiring the witness to appear and testify and answer the questions propounded by the Committee on October 18 at ten o'clock in the Circuit Court Room in Arlington.

Mr. Rauh: If Your Honor please, we except to what I take it is both a granting of the petition and a denial of our motion to quash. We plan to appeal at once and we request a stay pending appeal. We do not care—it does not matter to us—how quick or what burden you put on us in that regard.

[fol. 87] For example, if Your Honor feels that the stay should only apply if we file a motion for stay and writ of error in 24 hours, we will file it in 24 hours. I have no desire to delay. If Your Honor will give us any mechanical amount of time, any amount of time which is sufficient mechanically to do what has to be done.

I am not an expert in Virginia procedure. I understand there is a question about the Supreme Court of Appeals of Virginia moving by granting a stay of your order and that the more properly and more often the move is by petition for writ of error. It would be our intention in order to expedite this matter to file; if Your Honor would grant us a stay, pending the filing, on condition that we file within 24 hours we will do that. Naturally, we would rather have 36 or 48 because we do have to get to Richmond. We do have to get the papers for the appeal ready.

Furthermore, we can assure the counsel for the Committee that we will cooperate to have this decided by the Supreme Court of Appeals of Virginia at the earliest possible moment. We are ready now to do anything in that.

Now I would like to point out to Your Honor the effect of denying us the stay. The effect of denying the stay under the laws as we understand it in Virginia here, in Michie's Jurisprudence, page 252, Volume IV, the fact that a witness may disagree with the Court on the propriety of its ruling [fol. 88] is, of course, no excuse for his not complying with them. The proper method of challenging the correctness of an adverse ruling is by an appeal and not by disobedience.

Therefore, if Your Honor were to deny us a stay in effect Your Honor would be denying us any possibility of

raising this question in a higher court. I am sure Your Honor would be the last one to want to deny a person the right of, appellate right.

May I call Your Honor's attention to the case I mentioned in examination of Mr. Thomson: National Association for the Advancement of Colored People, Incorporated, against Committee on Offenses Against the Administration of Justice. That is the Boatwright Committee which is the correlative committee. It is Record No. 4750 now pending in the Supreme Court of Appeals of Virginia in Richmond. In this case Judge Huntley did grant a stay in these terms: It being represented by the moving parties that they intend to petition for writ of error to the foregoing portion of this order, it is further ordered that the effect of the subpoena ought to be quashed, be suspended until April 15, 1957; thereafter until such petition for writ of error filed on or before April 15, 1957 is acted upon by the Supreme Court of Appeals.

Now, in that case Judge Huntley gave what is almost a month to file the petition. Obviously, that might render the thing moot. We have no such intention. I want to make [fol. 89] clear that it is not our desire to render this case moot. It is our desire to keep this case alive. It is Mr. Scull's desire to test this matter in its most complete and legal form. Therefore, it is farthest from our desire to delay this in any way.

On the other hand, unless Your Honor does stay the order that he has indicated so that the Supreme Court of Appeals of Virginia can Act, then we are in the position of being denied an appeal. Therefore, we would request a stay somewhat along the order of: It is stayed until the Supreme Court of Virginia shall act, provided the motion for a stay and the petition for writ of error is filed within 48 hours. I would suggest an order along that line.

Mr. Hall: May it please the Court, with regard to the argument that Mr. Rauh has just made in support of his motion for a stay of execution of the order of the Court, I know it is not controlling on this Court but I think it might be persuasive to point out to the Court that in Farmville, Prince Edward County, when the NAACP was ordered to comply with subpoenas to furnish certain records down

there to the Boatwright Committee—and I was present at the time that this was done—that the attorneys for the NAACP made a motion to stay the execution of the order of the Court pending an appeal, similar to the motion that Mr. Rauh is making here now. Judge Flood refused to grant the stay at that time and gave as one of his reasons [fol. 90] the fact that they were attempting to do by indirection what they could not do by direction. If he did grant a stay, it would have the effect of defeating the very purposes of the order of the Court because the case could not possibly be heard by the Supreme Court of Appeals before its fall term began; and of course they take those things up in order. They won't let us come down there any time we want to and say, Gentlemen, we would like to present this case because Mr. Rauh and I have agreed to do it. You have got to take your turn, the way I understand it, and in two more weeks we will be through.

As an additional persuasive authority, I might also point out that Judge Medley, back on the 20th of September, when we were holding hearings here in the case of the Committee versus Edwin C. Brown, that he was asked by Mr. S. W. Tucker, counsel for Brown at that time, to stay the execution of the order of the Court requiring him to produce certain records and Judge Medley refused to grant a stay of execution in that case.

Now, as far as the case that is pending in the Supreme Court of Appeals is concerned, I am acquainted with that case, too, although it is a case involving the Boatwright Committee because I have had numerous occasions to have conferences with Mr. William H. King of Richmond who is counsel for that committee.

[fol. 91] I know that that stay in that case—I know as a matter of fact; I am not just guessing at it—was granted by consent of counsel on both sides. They agreed to it. It was not opposed because they figured they would probably have enough time to get the thing up in the Supreme Court of Appeals. That was done back in the spring. But ever since then, when any effort has been made, and the same thing was done in Norfolk and Charlottesville, when any effort is made on behalf of these parties to get the Court to stay its execution of its order, almost invariably—in

fact invariably as far as I know—the Court has refused to grant the stay.

The Court: What is the situation? The defendant has ultimate right of appeal, hasn't he?

Mr. Hall: That's right; but he doesn't have right to a stay of execution as a matter of right in a case of this sort. It would absolutely defeat the purpose of the committee and the Court, and of course it might defeat his right of appeal in a way. He is going to be required to give testimony or produce whatever he is supposed to produce. But be that as it may, it has been held by other judges that they are not required to grant a stay in a case of this kind.

Mr. Rauh: May I suggest to Your Honor a matter of equity? It is now the 15th of October. This committee was created by legislation over a year ago. It is not our fault, [fol. 92] we have not made any dilatory motions, it is not our fault that the problem comes so close to the end.

I would urge Your Honor, and I think it was implicit in Your Honor's question to Mr. Hall, that we ought to have the right of appeal and the one thing that they have a right to be prevented against is our stalling. I quite agree that they have the same right. It seems to me that we have a right of appeal. They have a right that we not use the appellate method in some dilatory fashion. That is why I thought that the offer that we get there in 48 hours—I will join in a motion to expedite argument to be filed within the same 48 hours—I will join in any motion with Mr. Hall that he suggests that will get this up. I give this Court my word as a lawyer that I will. I would even go for 24 hours if I had to file it tomorrow but that is just physically going to be difficult and the 48 might determine it. Maybe they will hear us next week.

All we can do is try, if Your Honor please. I urge that the equity lies with the right of appeal in this case.

Mr. Thomson: Could I be permitted to make just a brief statement? I recognize the dilemma the Court is in, in a situation of this nature. Likewise, it is the position that the Committee would find itself in.

In no instance would we like to request that an appeal not be granted except we are faced with this proposition,

that the Committee does go out of existence on November [fol. 93] first. I am sure Mr. Rauh is not femiliar (sic) with the fact that that legislation creating the Committee did not come into existence until January, didn't become effective. Nonetheless, it is a question of when the Committee could take these matters up. It happened that we couldn't take this particular matter up until September. Even obviously with proceeding in this Court it took us about a month to come to a hearing here. If the matter must proceed to the Supreme Court of Appeals, there is no possibility that we will hear the testimony of David Scull before the time for the Committee's activities comes to a close on November first.

I would just suggest to the Court that it is a matter of policy which you are going to have to decide, Your Honor. If you figure it is in the best interests of the State of Virginia to have this before November 1, that we get this testimony, then we should be allowed to proceed without a stay being granted. If you feel, on the other hand, that Mr. Scull should have the benefit of a stay, then the Committee will certainly recognize that. It is too late in the season for us to take any other action. That would conclude our hearings right at that time.

Thank you, sir.

The Court: Well, I am not satisfied that under the present state of the record there is a right of appeal. There is an order by the Court, or will be an order by the Court, requiring the witness to testify before the Committee.

[fol. 94] The witness, of course, has not had an opportunity to obey or disobey that order of the Court and I am not satisfied that this present state of the record can be appealed.

Mr. Rauh: If Your Honor please, the best authority on that is the Supreme Court of Appeals of Virginia in this very case where they granted the petition for writ of error by the NAACP before they had refused the information at the exact stage that we are at. I don't think it is really a question in view that we do have appellate right at this stage. In this case, if Your Honor please, the NAACP sought, had a subpoena for its records, and it sought to

quash that and the judge refused, the District Judge, Judge Huntley, refused that.

Then they didn't answer or not answer. They went direct on petition for writ of error and the petition for writ of error was granted. I could make this available to Your Honor but it does seem to me to settle the question that is troubling Your Honor about the appellate action, the appealability of the order presently to go forward.

Mr. Hall: That was pointed out by Judge Medley in regard to that other case, that it would only be when the respondent was in contempt in his opinion there would be an appealable posture.

Mr. Rauh: If Your Honor please, I would like to suggest that the Supreme Court of Appeals of Virginia did what [fol. 95] it did there, which is to grant the appeal, the petition for writ of error, that is, as I said before, another decision of the Supreme Court of Virginia, Robertson versus Commonwealth, holds that if you refuse, if you do commit the contempt instread (sic) of appealing, you can't any longer appeal. That is, while your order is in effect directing Mr. Scull to answer, that order is violated, it is the same as the situation in which John L. Lewis found himself. Mr. Lewis violated an injunction. He went to the appellate court and said, I can violate that injunction because it was no good. The court said, "No; while the order of the court is in existence, it must be complied with."

Now, that is the same rule as Robertson versus Commonwealth of Virginia. There, it seems to me, why the Supreme Court of Appeals of Virginia granted the writ of error in the case that you hold in your hand is because if they had refused that, then the witness would have had to turn over the material or refuse. If he turns it over, the case is moot because he has complied. If he doesn't turn it over and commits the contempt and has no appeal right from that case as long as the order is in existence, he has no appeal.

What we have here is a dilemma of time against right. We have a right on one side and the right on the other that Your Honor has to weigh. They weighed it in that case by saying this was an appealable order.

[fol. 96] I agree with Mr. Hall that this is a matter for weighing the equities on whether we should have a chance at an appeal to the detriment of the time problem.

Now, I don't agree with Mr. Thomson's statement, and I thought it was a little unfair for him to say, more or less, if you stay in the matter, we won't try.

We offer Mr. Thomson our joint efforts to get this decided in the Supreme Court of Virginia next week. We will file an appeal tomorrow or Thursday at your direction, Your Honor; we will join in a joint petition which Mr. Thomson and we can write tonight pointing out the importance of this and we will ask the Supreme Court of Virginia to hear us next week. We will raise no time limits after that.

In other words, I am not going to say, I didn't argue that Friday isn't fair time, notice. I am not arguing that is not adequate notice. We will not make any points of notice or quorums or any of those things. What we want is a decision on a point that Mr. Scull has made with all sincerity and I think our offer to expedite, to get a decision in the Supreme Court of Virginia is only fair. It looks to me like Mr. Thomson doesn't want a decision from the Supreme Court of Virginia. Well, we would like to get it, if Your Honor please, and I think we are entitled to an appeal and we guarantee Your Honor, and you can revoke the stay any time there is the slightest bit of feeling on Your Honor's [fol. 97] part that we have not lived up to the representations that I have made here today.

Mr. Thomson: I had no intention to cast any aspersions on what Mr. Rauh had said. Quite the contrary. I recognize that it is wholly impossible to get a decision from the Supreme Court of Appeals and merely as a matter of fact I say this would conclude our hearing. I didn't mean that in a derogatory sense at all. It is just an impossibility to do it. And for us to set a meeting and give notice and all that, it would be impossible. But I didn't mean in any derogatory sense at all.

The Court: I have considerable doubt that the matter could be disposed of in the Court of Appeals before November first.

Is that case that you cite in 181 Virginia?

Mr. Rauh: Yes, if Your Honor please, it is referred to in the footnote by Michie to the proposition that the fact that a witness may disagree with the Court on the propriety of its ruling is, of course, no excuse for his not complying with it. The proper method of challenging the correctness of an adverse ruling is by an appeal and not by disobedience. This is the case that is cited by him for that proposition.

The Court: What is the page number?

Mr. Rauh: 520, sir; 181 Virginia 520.

If Your Honor please, I hate to bother you to read other [fol. 98] papers but my associate, Mr. Sorg, did prepare a paper on the question of appeal. It is three pages long. I will give one to the other side, if you care to see it.

The Court: All right.

It seems to me that this question, notwithstanding the sincerity of counsel in offering to have the question determined as a vital question which the Court of Appeals should determine, that in spite of that, this question can only become moot unless the witness responds to the order of the court directing him to testify and an order is found upon whatever happens insofar as the hearing of the Committee on the 18th is concerned.

There is no holding in this Robertson case that the right of appeal is lost by a finding of contempt; and it is my impression and opinion that it is not, that the matter of contempt can be, on proper procedure, adjudicated by the Court of Appeals.

In this case that is now, I assume, in the Court of Appeals, the National Association for the Advancement of Colored People against the Committee on Offenses Against the Administration of Justice, there apparently was plenty of time to have this question determined and it could very well have been submitted by agreement of counsel in the form in which it was and under which the Court of Appeals took jurisdiction of it and granted a writ. But under the [fol. 99] peculiar circumstances of this case and the element involved which will render it moot, I am going to refuse to stay the proceedings until such further proceedings are held on the 18th of October.

Mr. Hall: May it please the Court, as far as the date is concerned, we have been discussing the date and we find

it will probably be more convenient to get the Members of the Committee here and we are almost assured of doing that on the 19th, which is Saturday. We would have very much better chance of doing it on a Saturday which is not a regular business day for them.

So, if the Court will make that for the 19th, if that is satisfactory with Mr. Rauh——

Mr. Rauh: I have no objection to the dates, nor to working on Saturday.

Our position is a little different, Your Honor. Now that the date has been raised, I would like to be heard.

Your Honor has refused us the stay pending some action in the Supreme Court of Appeals. Now we make another request, slightly different, which is that Your Honor set the date forward somewhat to give us that much more time without rendering the case moot. For example, if Your Honor would set it, instead of the 19th, for the middle of next week, then we would have a week in which to try to get to the Supreme Court of Virginia. If we are un-
[fol. 100] successful, to Chief Justice Warren, the Circuit Justice, and therefore would it be possible to set the date not for the 19th which we don't say is inconvenient, but which we say would give us a little more time. Would it be possible to set it for the middle of next week, whatever date would be convenient in that area for Mr. Thomson? That gives us a little more time to make whatever efforts we can in the Supreme Court of Virginia, and with the Circuit Justice of the Supreme Court.

Mr. Hall: May it please the Court, in line with that the Committee finds that the 23rd would be satisfactory.

Mr. Rauh: That would be fine, then; we would set the date in the order for the 23rd.

The Court: For hearing of the Committee.

Mr. Hall: Yes, sir.

In other words, instead of requiring him to answer on the 18th, require him to appear and answer before the Committee on the 23rd. We can get a court room in Alexandria. I don't know whether we would be able to get one here. I know we can get one down there.

The Court: Do you have any objection to Alexandria?

Mr. Rauh: No, sir.

The Court: All right. You want it on the 23rd?

Mr. Hall: Yes, sir.

Court Room No. 3 on the third floor.

Mr. Rauh: If Your Honor please, to expedite the appeal [fol. 101] we have an order which I believe is in all respects appropriate to what has occurred today, with the exception of the date of the order and if possible, if we could reach agreement and get it signed it would expedite the appeal. The only thing that is in error in it, from what Your Honor has done, is that we have reached a place and time to be designated and you would have to write in there the time and place you have designated.

If Your Honor please, Mr. Hall asked me if I had any objection to putting in, in the second to the last line, after "answer" those questions addressed to respondent, and Mr. Hall suggests we put in, "and those directly relating thereto." It is on page 1.

I call Mr. Hall's attention to the fact that Your Honor's ruling was "these questions" so that I believe our order meets Your Honor's ruling. Were Your Honor to change the ruling, I have no objection to changing the order and meeting it. I think this is what Your Honor said, in substance.

The Court: I think that the Court is bound to make that finding.

Mr. Hall: Your Honor, it is all right; this draft of the order is all right unless the Court wants to put in the specific time and place.

[fol. 102] The Court: I think that should go in there.

Mr. Rauh: If Your Honor wants to avoid the work of changing it, I will stipulate on the record that subsequent to the entry it was agreed by all parties that the hearing would be in Alexandria on October 23. I have no objection to Your Honor's changing it if Your Honor would like to save that effort.

I would agree that the order was signed, that they did designate that time and we did appear to agree at that time.

Mr. Hall: I don't question your intentions at all, Mr. Rauh, and I am sure that you would carry them out if it came down to that.

The Court: Let us put it in.

Mr. Hall: We ran into some difficulty on that before.

REVISED RULING BY THE COURT

The Court: This order will read, then:

"ORDERED, That the motion to quash the rule to show cause served on petitioner on September 20, 1957, be and is hereby denied. Respondent, David H. Scull, is ordered at a time and place designated hereinafter to appear before said Committee and answer those questions addressed to respondent which he has previously refused to answer before said Committee on September 20, 1957, in Court Room No. 3, Court House, Alexandria, Virginia, at 10 o'clock a. m."

[fol. 103] Mr. Rauh: I am sorry; I didn't fill it in just right.

The Court: At a time and place designated hereinafter——

Mr. Rauh: Yes, sir; to appear before said Committee, and so forth.

Then, after September 20, 1957, at Court Room No. 3, Court House, Alexandria, Virginia, 10 o'clock a. m.

We note our exception to the entry of the order. I understand it is customary for the excepter to write that on the order. Shall I do that now? I was so informed by Mr. Sorg.

The Court: Respondent, David H. Scull, having taken exception to the Court's order, and having represented that he intends to petition for a writ of error to the foregoing portion of this order, and having requested a stay—I think you have it there.

Mr. Rauh: Mr. Sorg agrees that we have it in there. Thank you, sir.

(Counsel endorsed the order.)

(Whereupon, at 4:15 o'clock p. m., the hearing was adjourned.)

Karl G. Sorg, Counsel for David H. Scull, Lester Hall, Chief Counsel for Committee on Law Reform & Racial Activities.

Tendered and signed this 11th day of December, 1957. Emery N. Hosmer, Judge.

[fol. 104] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 105]

PETITIONER'S EXHIBIT #1

10/15/57
Filed and stipulated
E. N. H. Judge.

[Stamp]

Sep 16 1957
Time indicated 2:30
Fairfax County Sheriff's Office
Received

COMMONWEALTH OF VIRGINIA, to-wit:

To: The Sheriff of Fairfax County:

Under the authority delegated by Chapter 37, Acts of the General Assembly of Virginia, Extra Session, 1956, the Committee on Law Reform and Racial Activities created and established by virtue of said Act, commands you, in the name of the Commonwealth of Virginia and of said Committee, that you summon David H. Scull, whose address is Annandale, Virginia, to appear before said Committee in Circuit Court Room No. 1, of the Arlington County Court House, Arlington, Virginia, on Friday, the 20th day of September, 1957, at 10:00 o'clock, A. M., E.D.S.T., to produce before said Committee all papers, records, and documents in his possession or under his control pertaining to his participation in litigation relating to integration of the races in the public schools of Fairfax County, Virginia, or of any other place; and to testify and the truth to say in connection with an investigation being made by said Committee relating to the need or lack of need for legislation pertaining to the activities of corporations, associations and other like groups which seek to influence, encourage, or promote litigation relating to racial activities in this State.

And that you have then and there this writ and make return how you have executed the same.

Italicized material handwritten notation.

WITNESS, James M. Thomson, Chairman of the Committee on Law Reform and Racial Activities of the General Assembly of Virginia, this 16th day of September, 1957, and in the 182nd year of the Commonwealth.

/s/ JAMES M. THOMSON
Chairman.

[fol. 106]

PETITIONER'S EXHIBIT #3

Sept 20 Transcript

Chairman Thomson: Mr. Scull, do you swear or affirm that the testimony you will give before the Committee on Law Reform and Racial Activities is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Scull: I am a Quaker; I will tell the truth.

Whereupon, DAVID H. SCULL, having duly affirmed that he would testify the truth, was examined and testified upon his affirmation as follows:

Examination by Chairman Thomson:

Q. Would you state your full name?
A. David H. Scull.

Mr. Fanelli: Mr. Chairman, I would like to ask the Committee's indulgence on my appearance here. I would like the Committee to know that I am a resident of Virginia but I practice law in the District. I am not a member of the Virginia bar, and I would like your indulgence in permitting me to appear here as his counsel.

Chairman Thomson: I will help you, I think, by a statement.

The practice of the Committee, and I think that will be very helpful in your representation of your client—the Committee, of course, is taking the position that no witness is entitled to counsel, but as a courtesy we have extended that to each witness who has come before the Committee and [fol. 107] when the witness feels that he would like to consult with his attorney on any question that is asked him, the question can be directed to counsel at your convenience.

If counsel feels that he would like to state an objection to the question, he will state his objection and direct it to the Chair and we will rule on it at that time.

I think that will be very helpful and we can speed the hearing up very much that way.

Mr. Fanelli: Thank you, sir.

By Chairman Thomson:

Q. Would you state your full name, please?

A. David Hutchinson Scull.

Q. What is your address?

A. May I just say that there are some other David Sculls in the area, so if you use David H. Scull it will avoid embarrassing anybody else.

Annandale, Virginia.

Q. What is your occupation?

A. I am a calendar publisher.

Q. Where is the location of your business?

A. In Annandale, also.

Q. Do you conduct a business from your home?

A. No, we have our own building.

Q. Under what trade name do you operate?

A. Both the name of Scull Studios, which is a partnership [fol. 108] in the calendar business, and the Turnpike Press, Incorporated, which is a general printing business.

Q. A Virginia corporation?

A. Yes.

Chairman Thomson: Mr. Counsel, would you like to ask questions?

By Mr. Hall:—

Q. Mr. Scull, do you belong to an organization known as The Fairfax County Council on Human Relations?

A. Mr. Chairman, I would like to ask, if I may, and I just made a note to refresh my memory, which I will be glad to give you, that on advice of counsel I wish to state that the language of the subpoena delivered to me was so broad and vague and the time to secure counsel and to prepare myself for this hearing was so short—only three days—that before going further I wish to ask you to tell

me the specific subject of your inquiry today, so that I may judge which of your questions are pertinent.

Chairman Thomson: Have you ever received a subpoena before?

The Witness: I don't think I have.

Chairman Thomson: I will address these questions to your counsel, then.

Is it Mr. Fanelli?

Mr. Fanelli: Yes, sir.

[fol. 109] Chairman Thomson: Mr. Fanelli, does any subpoena state directly what testimony is to be adduced by a witness?

Mr. Fanelli: None in my experience. This is part of the reason that I have advised him to make this request.

Chairman Thomson: The subjects under inquiry by the Committee, Mr. Scull, are three-fold:

One—several which primarily do not deal with you, but I will nonetheless state all three—the tax-exempt or tax status of both racial organizations in Virginia and the contributions made to such organizations—that is, the taxable status of them.

The integration or threat of integration on the public school system of Virginia, or the general welfare of Virginia.

The third one deals with the violation of certain statutes which are designed to prevent champerty, barratry, and maintenance, or the unauthorized practice of the law.

Now, the questions which may be addressed to you will cover those fields or your counsel, I am certain, will properly object to it being without the scope of the Committee hearing.

Now, the question asked of you is: Do you belong to The Fairfax County Council on Human Relations?

The Witness: Well, I at this point, Mr. Chairman—may I make a statement, then, of which I have a copy which I [fol. 110] will give you?

On September 29——

Mr. Fanelli: Excuse me. I think it might be better if you gave them a copy of the statement.

Chairman Thomson: It will automatically go in as part of the record.

(The statement referred to is as follows:

"Statement by David H. Scull of Annandale, Virginia, before the Virginia Committee on Law Reform and Racial Activities at a hearing in Arlington, Virginia, on September 20, 1957.

"Mr. Chairman:

"On September 29, 1956, the General Assembly of Virginia passed seven bills designed, broadly speaking, to restrict the free access to the courts of citizens who need to establish or maintain their civil rights. I believe that all of this legislation is unconstitutional and contrary to our heritage of common law, and that consequently this Committee, created by one of those bills as part of a whole legislative program, is without proper jurisdiction to pursue its inquiry.

"I believe that it is not only my civil right but also under some circumstances my moral duty to counsel with a fellow-citizen as to his legal rights if he is ignorant of them, to [fol. 111] offer him my support if he is fearful of asserting his rights, and to assist him financially if he is too poor to take the legal steps necessary to establish his rights. It should, of course, be the duty of the executive and of the legislature to see that the rights of all citizens are protected. But when to the lasting dishonor of Virginia our Governor and our General Assembly have done everything possible to discourage our humblest citizens from enjoying their rights, it becomes especially the duty of the conscientious person to see to it that justice is done to the ignorant, the friendless, and the poor. I make no claim here to have done anything extraordinary in this way, but I believe that no agency of the government has the right to question or to interfere with any citizen in the exercise of such a civic role. If such intimidation were sanctioned, then no unpopular cause or helpless minority could be assured of free access to the courts as a protection against tyranny. A disinterested concern for justice for the person from whom there is no possible claim of blood or opportunity of reward has through the ages been extolled as one of the noblest virtues, and a cornerstone of our system of laws. Such a disinterested act is made illegal by the legislation passed last year.

I am proud to have protested this action in Richmond before it became law; I challenge it now.

"Consequently, I shall decline to answer any question on [fol. 112] this subject put by the present committee unless and until the constitutional validity of its inquiry and the related legislation has been upheld by proper judicial process.

"I believe that furthermore any right which I may exercise personally and individually I may also exercise jointly with other citizens through a voluntary organization or through voluntary contributions, and that the state has no general right to invade the privacy of such voluntary association in order to accomplish unconstitutional objectives. I shall, therefore, equally decline to answer questions put by this committee on this subject, although as in the case of individual activities I shall willingly answer such questions as the highest court to which the matter may be referred shall decide are proper. I fully recognize the public right to know the officers, directors, and general purposes of every organization which sets itself before the public in any way, but since this is a matter of public information for every organization to which I belong or contribute, I have nothing to add to what the committee can obtain directly from the organization in which it may have an interest.

"The subpoena served upon me goes beyond this Committee's power under its enabling act. I am not properly informed of the subject of inquiry. The question you ask me is beyond your jurisdiction.

[fol. 113] "For all of the foregoing reasons, and on the basis of all the rights accorded me under Sections 8, 11, and 12 of the Constitution of the Commonwealth of Virginia and the correlative provisions of the Federal Constitution, I respectfully decline to answer that question."

[fol. 114] Chairman Thomson: I appreciate your statement fully, Mr. Scull.

These are also matters which must be placed in the Record before the proper determination on these questions can be made, so I will direct each question to you and I would appreciate your answer as you see fit in regard to each one of them.

Are you a member of The Fairfax County Council on Human Relations?

The Witness: I decline, and can we just have it understood that it is each declination——

Chairman Thomson: I want you to state it each time, the grounds for your refusal. If you want to say on the basis of your statement, it would probably simplify it.

The Witness: I will read it each time, if you want, but I decline on the basis of the statement.

Chairman Thomson: That is, the statement entitled "Statement by David H. Scull of Annandale, Virginia, before the Virginia Committee on Law Reform and Racial Activities at a hearing in Arlington, Virginia, on September 20, 1957."

The Witness: Correct.

Chairman Thomson: That statement is unsigned by you. Would you sign that statement?

The Witness: If you care to. Were all of those carbons? I think I have an original here someplace.

[fol. 115] Chairman Thomson: I would like to have the original for the presentation to the Court.

Do you swear or affirm that the matters or things herein are true to the best of your knowledge and belief?

The Witness: Yes.

Chairman Thomson: I will repeat the question:

Are you a member of The Fairfax County Chapter on Human Relations?

The Witness: Fairfax County Council on Human Relations. I decline on the basis of the statement.

Chairman Thomson: Are you a member of the National Association for the Advancement of Colored People?

The Witness: I decline on the basis of the statement.

Chairman Thomson: Have you contributed to any of the suits, contributed financially to any of the suits designed to bring about racial integration in the public schools?

The Witness: Do you want to limit that to Virginia or to any place?

Chairman Thomson: In the State of Virginia.

The Witness: I decline to answer on the basis of the statement.

Chairman Thomson: All right, sir.

Have you paid court costs in any of the suits designed [fol. 116] to bring about racial integration in the State of Virginia?

The Witness: I decline on the basis of the statement.

Chairman Thomson: Have you paid attorneys' fees to any attorneys in regard to racial litigation involved in the integration of the public schools in Virginia?

The Witness: I decline on the basis of the statement.

Chairman Thomson: Have you attended any meetings at which the formulation of suits against the State of Virginia in racial integration suits in the public schools have been discussed?

The Witness: I decline on the basis of the statement.

May I ask, Mr. Chairman, is a copy of this transcript to be available to witnesses?

Chairman Thomson: It will be available, the portion that you give will be available to you or your counsel.

Mr. Hall.

By Mr. Hall:

Q. Mr. Scull, I notice that at the end of your statement—First, let me ask you this:

Are you an attorney?

A. No, sir.

[fol. 117] Q. I notice in your statement that you say that you think you have a moral duty to counsel with a fellow citizen as to his legal rights if he is ignorant of them.

Do you feel qualified to counsel with him as to his legal rights?

A. I decline on the basis of the statement.

Chairman Thomson: Mr. Fanelli, let me caution you against this. It is a natural practice, I know. Instead of directing questions, if you have objection to a question, direct it to the Chair.

Mr. Fanelli: I have no objection.

Chairman Thomson: I would appreciate it if you would not converse with the witness without making objection to the Chair. He can consult with you, but don't let it work the other way. You work through the Chair.

By Mr. Hall:

Q. I understand you decline to answer the question?

A. Yes, sir.

Q. On the same ground?

A. Yes.

Q. In the last paragraph of your statement you say:

"For all of the foregoing reasons, and on the basis of all the rights accorded me under Sections 8, 11, and 12 of the Constitution of the Commonwealth of Virginia and the correlative provisions of the Federal Constitution, I re-[fol. 118] spectfully decline to answer that question."

A. Yes, sir.

Q. Are you acquainted with Section 8 of the Constitution of Virginia?

A. I have read all of those sections.

Q. Are you acquainted with that section to the extent that it does not apply to a legislative inquiry but only to a criminal prosecution?

A. Excuse me. May I—this is getting into legal grounds.

Mr. Fanelli: I may say to the witness that you either are acquainted or you are not acquainted. If you are not, just tell him so.

The Witness: No, I am not.

Chairman Thomson: Do you think that this proceeding today is a criminal proceeding?

The Witness: No.

By Mr. Hall:

Q. Let me get over to this other:

Are you also relying on Section 11 of the Constitution of Virginia, which provision is shorter than the other one, which states that no person shall be deprived of his property without due process of law; and in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other and ought to be held [fol. 119] sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five in cases cognizable by Justices of the Peace, or to not less than seven in cases not so cognizable."

Have you been deprived of any property by reason of being subpoenaed to testify before this Committee, or do

you anticipate being deprived of any property by reason of this subpoena?

Mr. Fanelli: If you want to consult with me, would you inform the Chairman?

Chairman Thomson: He can consult with you at any time.

The Witness: Mr. Chairman, as counsel pointed out, I am not a lawyer. Therefore, the legal aspects of this are included on advice of my counsel.

Chairman Thomson: That is good enough.

By Mr. Hall:

Q. Are you aware, of course, that this is not a civil suit?

A. Yes.

Q. You still claim that you are entitled to a trial by jury in this proceeding?

A. Well, that is a legal interpretation which I would have to refer to counsel.

Chairman Thomson: Would you like to consult with counsel on that?

[fol. 120] The Witness: We have presented the best statement that we could within the limited time that we had after I received notice and I don't think on the spur of the moment that I could improve on it even if we did.

By Mr. Hall:

Q. You feel you are entitled to depend on Section 11 of the Constitution of Virginia which provides for jury trials in civil cases?

A. On advice of counsel, we have put in the general statement which is there.

Q. I see.

Now, Section 12 provides that the freedom of the press is one of the great bulwarks of liberty and can never be restrained but by despotic governments and any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right.

Do you think that the questions asked by the Committee here today have abridged your right to freely speak, write, and publish on any subject that you choose?

A. Well, the reference to Section 12 is also included on advice of my counsel.

Mr. Hall: It is difficult for me to understand, but I guess you are entitled to take that position.

Mr. Fanelli: Thank you, sir.

By Mr. Hall:

[fol. 121] Q. Do you have a post office box in your name at the Annandale Post Office?

A. Yes.

Q. What is the number of that post office box?

A. 218.

Q. Who else uses that box number besides yourself?

A. I decline to answer on the same general grounds as of the statement.

Q. Does the Fairfax County Council on Human Relations use that box?

A. I decline on the basis of the statement.

Q. Has the NAACP used that number from time to time?

A. I decline to answer on the basis of the statement.

Q. Has the organization known as the Citizens Clearing House used that box number?

A. I decline to answer on the same grounds.

Q. Has the Fairfax County Federation of PTA's used that number?

A. I decline to answer on the same ground.

Q. Has the Fairfax County Federation of P-TA Workshops on Supreme Court Decisions on the Public Schools used that box number?

A. I decline to answer on the same grounds.

Q. Has Miss Caroline H. Planck or Mrs. Barbara Marx used that box number?

[fol. 122] A. I decline to answer.

Q. Do you know Mrs. Planck or Mrs. Marx?

A. I decline on the same grounds.

Q. Has Dr. E. B. Henderson used that box number?

A. I decline on the same grounds.

Q. Has the National Conference of Christians and Jews used that box number?

A. I decline to answer on the same grounds.

Q. Has the Save Our Schools Committee of Fairfax County used that box number?

A. I decline on the same grounds.

Q. Has Mr. Warren D. Quenstedt used that box?

A. I decline on the same grounds.

Q. Has Mr. E. A. Prichard used that number?

A. I decline on the same grounds.

Q. Has the American Civil Liberties Union used that same box number?

A. I decline on the same grounds.

Q. Has the Americans For Democratic Action, known as ADA, used that box number?

A. I decline on the same grounds.

Q. Has the Japanese-American Citizens League used that box number?

A. I decline on the same grounds.

Q. Has the Washington Inter-Racial Workshop used that [fol. 123] same number?

A. I decline on the same grounds.

Q. Has the American Friends Service Committee used that box number?

A. I decline on the same grounds.

Q. Does the Community Council for Social Progress use the same box number?

A. I decline on the same grounds.

Q. Does B'nai Brith use that same box number?

A. I decline on the same grounds.

Q. Does the Communist Party use that box number?

A. I decline on the same grounds.

Chairman Thomson: Excuse me, Mr. Hall.

Do you belong to any racial organization, and by "racial" I mean organizations whose membership is interracial in character or organizations that are instituting or fostering racial litigation?

The Witness: I decline on the same grounds.

By Chairman Thomson:

Q. Before you started operating the printing establishment and the two printing organizations that you have, what was your occupation?

A. I decline on the same grounds.

Mr. Fanelli: You can tell them.

The Witness: May I withdraw that? I have no objection [fol. 124] to stating that I was employed in the Government for 13-14 years.

By Mr. Hall:

Q. What department, please, sir?

A. The most recent one was in the Department of State.

Q. What particular division in the Department of State?

A. Point IV Program.

Q. Were you in that program during the entire time you were in the Department of State?

A. It was not started until 19—I don't remember the dates; it was the last three or four years I was there.

Q. How long has it been since you were employed by the Department of State?

A. Between four and five years.

Q. What was the nature of the termination of your employment?

A. Voluntary resignation to enter the family business.

Q. Have you ever been called as a witness before any Congressional Committee?

A. I decline to answer on the grounds of the statement.

Q. Has your name ever been cited by any Congressional Committee as being on any list of members of any organizations that are cited as subversive?

A. I decline to answer on the grounds of my statement.

Chairman Thomson: Do other members of the Commit- [fol. 125] tee have any questions of the witness?

Mr. Scull, the questions that have been propounded to you, you have refused to answer on the basis of a prepared statement which you have presented to the Committee.

I am now directing that you answer each of those questions and for that purpose I would re-read them if you will state that you will answer them.

The Witness: No, I will still decline to answer on the grounds of the statement.

Chairman Thomson: Having been directed by the Chair to answer it and failing to answer it, the Committee will

apply to the Circuit Court of Arlington County immediately for an order to compel your testimony and we will serve you with appropriate papers in the interim. We will retain you under subpoena here until that paper has been served on you.

If you wish, you may wait in the hall, but you will be subject to call by the Committee again.

Mr. Hall, will you prepare the necessary papers?

The Witness: Does not the Act refer to being served in the County of residence?

Chairman Thomson: Not for the purpose of enforcing the subpoena, Mr. Scull. The natural consequence of the Act, and you may talk to your attorney—you don't need my advice on it—you have competent counsel here; if you don't believe that the matter is adequately served on you, you [fol. 126] are certainly entitled to present that matter to the Court when it hears it and we will try to arrange for the earliest date possible. It probably will not be today but we will serve the papers today and you will have those in your hands for your study.

Mr. Fanelli: May I suggest, Mr. Chairman, that if counsel gets in touch with me and just gives me his service, we will not have any questions about the service of the papers and you won't have to hold us here unless you want us for some other reason.

Chairman Thomson: It may be possible that we could determine the matter, or at least set the thing down. If you will stay until we can clear the matter up, we will work it out as quickly as we can.

Mr. Fanelli: If you have counsel's representation, I will raise no question about service.

Chairman Thomson: If you will nonetheless remain until the subpoena is released——

Mr. Fanelli: We will do that.

Chairman Thomson: We will straighten out the matter as quickly as we can.

Mr. Fanelli: May I speak to the Reporter to order a copy?

Mr. Hall: You can make whatever arrangements you want to about that.

(Whereupon, a short recess was taken.)

[fol. 127]

RESPONDENT'S EXHIBIT #1

(See Opposite) ☞

Note

Large two side foldout appearing at this point is shot in sections on card 3

[fol. 128]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

[Title omitted]

ORDER DENYING MOTION TO QUASH THE RULE TO SHOW CAUSE, ETC.—October 15, 1957

On October 15, 1957 there came on for hearing before this Court in the above entitled matter the Motion to Quash Rule to Show Cause filed by respondent David H. Scull. Said motion moved that this Court quash and dismiss the Rule issued upon respondent requiring him to appear and show cause why he should not be required to answer certain questions previously asked him on September 20, 1957 when he was subpoenaed to testify before the Committee on Law Reform and Racial Activities established by Chapter 37 of the Laws of the General Assembly, Extra Session 1956. Thereupon said motion was argued by Counsel for respondent and petitioner, and the Court took evidence and heard arguments under the Rule previously issued.

The Court having considered the evidence and arguments presented by both sides and being of the opinion that the grounds advanced by respondent are without merit and that he is properly required to answer the questions previously addressed to him by said Committee, it is accordingly

ORDERED that the Motion to Quash the Rule to Show Cause served on petitioner on September 20, 1957, be and is hereby denied, and the respondent David H. Scull is ordered at a time and place designated hereinafter to appear before said Committee and answer those questions addressed to re-
[fol. 129] spondent which he has previously refused to answer before said Committee on September 20, 1957 at Court Room No. 3, Court House, Alexandria, Virginia, at 10:00 a.m., October 23rd.

Respondent, David H. Scull, having taken exception to the Court's order and having represented that he intends to petition for a writ of error to the foregoing portion of this order, and having requested a stay thereof to permit him to file his petition, it is further

ORDERED that the motion of the respondent requesting this Court to stay its order herein be and it is hereby denied.

Given under my hand this 15th day of October, 1957.

/s/ Emery N. Hosmer, Judge of the Circuit Court of the County of Arlington, Virginia.

Seen: Excepted to /s/ Karl G. Sorg.

Seen: /s/ Leslie Hall, Counsel for Petitioner.

[fol. 132] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

[Title omitted]

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR—Filed October 18, 1957

Karl G. Sorg, Counsel for the Respondent, David H. Scull, hereby gives notice of his intention to petition the Supreme Court of Appeals of Virginia for a writ of error and supersedeas in this cause and sets forth the following assignments of error:

1. The questions which the Respondent, David H. Scull, was required to answer were not within the literal language of the authorizing statute (1956, Extra Session, Chapter 37; Chapter 4, Title 30, Code of Virginia, 1950, as amended) because said questions did not deal with racial litigation.

2. The Court erred in failing to require the Committee to meet its burden of showing why the information sought from the Respondent was necessary in the furtherance of its inquiry.

3. The Court erred in failing to hold that the authorizing statute and the action thereunder by the Committee in regard to the Respondent violates the 14th Amendment of the United States Constitution in the following respects:

(a) The Committee's action was arbitrary and capricious in that it acted without published or other rules and sub-

poenaed David H. Scull on the basis of unverified information to answer questions in the highly explosive area of racial relations.

[fol. 133] (b) The Committee was established and given investigative authority, as part of a legislative program of "massive resistance" to the United States Constitution and the Supreme Court's desegregation decisions, in order to harass, vilify, and publicly embarrass members of the NAACP and others who are attempting to secure integrated public schooling in Virginia.

(c) The purpose and effect of the inquiries of the Committee, including those addressed to the Respondent, is denial of access to the courts for vindication of Constitutional rights, by harassment and exposure of school integration plaintiffs and members of the organization which is most actively engaged in litigating the integration suits.

(d) The inquiries addressed to Respondent violate his rights of free speech, assembly, and petition because they repress freedom of expression and constitute an unjustified intrusion into and restraint upon his association with others in legal and laudable political and humanitarian causes.

(e) The demand for answers made upon Respondent by the Committee is arbitrary and unreasonable inasmuch as there is no justification for the special and selective investigatory authority granted to the Committee, and nothing in that authority renders pertinent the demand made upon Respondent to disclose his civic and political associations and activities.

(f) The Committee's authorizing resolution is too vague and imprecise to justify compelled testimonial disclosures.

(g) The Committee failed, despite proper inquiry made by Respondent, to inform him in what respect its questions were pertinent to the subject under inquiry by the Committee.

(h) The information sought from Respondent was neither intended to, nor could reasonably be expected to, assist the Legislature in any proper legislative function.

[fol. 134] 4. The Court erred in ordering the Respondent to answer the questions of the Committee because said order is in violation of the Respondent's rights under the 8th, 11th and 12th sections of the Constitution of Virginia for the reasons set forth in the third assignment of error herein.

5. The Court erred in ordering the Respondent to answer questions of the Committee by failing to consider the Respondent's refusal to answer as being predicated on "legal cause" within the terms and the meaning of Chapter 37 of the Acts of the General Assembly, 1956, Extra Session.

6. The Court erred in refusing to grant the Respondent a stay of its order requiring him to answer the questions of the Committee, said refusal having the effect of jeopardizing the Respondent's right of appeal under the statutes of Virginia and Section 88, Article VI of the Virginia Constitution.

/s/ Karl G. Sorg, Counsel for Respondent.

Certificate of service (omitted in printing).

[fol. 143]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

[Title omitted]

ORDER AWARDING RULE TO SHOW CAUSE—Entered October 24, 1957

This Day came the Committee on Law Reform and Racial Activities of the General Assembly of Virginia and tendered its sworn Petition praying that a rule be awarded requiring the Respondent, David H. Scull, of Annandale, Virginia, to appear and show cause why he should not be found guilty of contempt and punished therefor, which Petition is received and filed, and

It Appearing to the Court that the life of the Committee will expire on November 1, 1957, it is, hereby

Ordered that the Attorney for the Commonwealth for Arlington County, Virginia, be permitted to appear and prosecute this rule, and it appearing proper so to do, it is

Ordered that a rule is hereby awarded against the Respondent and directed to the Sheriff of the County of Fairfax, Virginia, which rule, together with an executed and attested copy of the Petition hereinbefore filed, he shall forthwith serve upon the Respondent requiring him to appear before this Court at 10:00 A.M. on the 30th day of October, 1957, to show cause why he should not be held in contempt of the order and process of this Court entered and served on October 15, 1957, and be punished therefor.

Entered October 24, 1957

/s/ Emery N. Hosmer, Judge.

I Ask for This: Leslie Hall, Chief Counsel for Petitioner.

[fol. 146] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

[Title omitted]

MOTION TO QUASH RULE TO SHOW CAUSE OR TO CONTINUE RETURN—Filed October 29, 1957

Comes now the respondent David H. Scull and moves that this Court quash the Rule to Show Cause why respondent should not be held in contempt, awarded against the respondent on the 24th day of October 1957, for the following reasons:

1. This Court is without jurisdiction to try respondent for contempt of its order of October 15, 1957 because that order was erroneous, null and void for the reasons stated in the Notice of Appeal and Assignments of Error filed by the respondent on October 18, 1957 from the entry of that order;

2. This Court is without jurisdiction to try respondent for contempt of its order of October 15, 1957 because by the refusal of this Court to stay an order finally requiring respondent to surrender the Constitutional privileges which he asserts, respondent was denied his Constitutional right of appeal for the vindication of his rights under the Federal Constitution;

3. So much of the Committee's Petition for Rule to Show Cause as asks that respondent be held in civil contempt is null and void because the expiration of the Committee's life on November 1 precludes this Court from compelling petitioner, by civil contempt proceedings, to answer the Committee's questions at a time when the Committee has already finally adopted its report and has [fol. 147] held its final meeting. Since the Committee has not been financially damaged, compensatory relief is likewise unavailable, with the effect that only criminal contempt proceedings may properly be invoked;

4. The petition for the Rule and the Rule to Show Cause do not properly invoke the criminal contempt jurisdiction of this Court, inasmuch as they are neither entitled in the name of the Commonwealth nor prosecuted by the attorney for the Commonwealth.

Should the motion to quash be denied, respondent moves in the alternative that the hearing on the return of the Rule to Show Cause be continued from the 30th day of October 1957 until respondent's appeal from this Court's order of October 15, 1957 is finally adjudicated. If respondent should prevail in his appeal of this Court's order of October 15, 1957 it would be unnecessary to prosecute respondent for contempt and the confusion and expense of two separate appeals on the same grounds would thus be avoided.

Respectfully submitted,

/s/ Joseph L. Rauh, Jr., /s/ John Silard, /s/ Karl Sorg, Counsel for Respondent.

Certificate of service (omitted in printing).

[fol. 151]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

COMMONWEALTH OF VIRGINIA Ex Relatione Committee on Law Reform and Racial Activities, Plaintiff,

vs.

DAVID H. SCULL, Respondent.

Arlington, Virginia

TRANSCRIPT OF PROCEEDINGS—October 30, 1957

The above-entitled matter came on to be heard, pursuant to notice, at 10:00 o'clock a.m.

Before:

Honorable Emory N. Hosmer, Judge.

APPEARANCES:

Leslie Hall, Esquire, For the Petitioner.

Karl Sorg, Esquire, and John Silard, Esquire, For the Respondent.

* * * * * * *

[fol. 153] Mr. Hall: I would like to call as my first witness Mr. James M. Thomson.

Whereupon, JAMES M. THOMSON was called as a witness and, having been first duly sworn, was examined and testified on his oath as follows:

Direct examination.

By Mr. Hall:

Q. Mr. Thomson, you are the Chairman of the Committee on Law Reform and Racial Activities of the General Assembly of Virginia?

A. I am, sir.

Mr. Hall: Does the Court care for me to further qualify him? He has testified before in this same proceeding and identified the Act and the formation of the Committee, and so forth. I would like to just get down to what occurred on October 23, 1957.

Mr. Silard: If necessary, to save time, we would be glad to stipulate that the affidavit which moved the rule to show case (sic) correctly states the nature of the prior proceedings here and that is the appearance of the respondent before the Committee on the 20th of September, the subse-
[fol. 154] quent proceedings, the order entered by this Court on October 15—those preliminary orders and proceedings we will be glad to stipulate were correctly stated in the affidavit submitted on the petition for this rule.

Mr. Hall: It is all a matter of record up to this point.

The Court: Very well.

By Mr. Hall:

Q. Mr. Thomson, did a quorum of the Committee convene in the city of Alexandria on October 23, 1957?

A. A quorum for the purpose of a hearing, that is, the taking of testimony, convened in Court Room No. 3 of the Corporation Court of Alexandria on October 23.

R. Macklin Smith, Frank P. Moncure and myself were the three members in attendance at that meeting.

Q. Yes, sir.

Now, at that time did Mr. David H. Scull, the respondent here today, appear before the Committee?

A. He did—the gentleman sitting right here at the end of the table.

Q. Was he affirmed to tell the truth at that time?

A. Yes, sir; he did not on a previous occasion wish to swear that he was giving true testimony and I administered the oath by which he affirmed that what information he gave would be the truth.

[fol. 155] Q. Do you have a copy of the transcript of the proceedings as far as Mr. Scull is concerned?

A. Yes, sir, I do.

Q. That is before you.

Will you tell the Court what answer he gave to the request of the chairman to answer the questions which had been previously propounded to him on September 20, 1957?

A. After the qualifying questions, identifying questions, I asked him if he were a member of the Council on Human Relations, which was the identical question asked on September 20.

At that time his counsel indicated that they wanted to make a statement and he did. The witness then did state that he was refusing to answer any questions of the Committee, was refusing first to answer that question of the Committee on the grounds of the statement which he had previously made.

Mr. Silard: I submit, Your Honor, I believe that it would be more appropriate with the actual transcript before the witness, if, rather than giving his recollection of the proceedings and the actual answers and questions asked, he merely read the transcript of the statement made by the witness.

Mr. Hall: Will you stipulate that this is——

Mr. Silard: I will stipulate that this is the transcript of those proceedings, certainly. That is the transcript of those proceedings, yes, sir.

[fol. 156] The Court: It will be marked Committee's Exhibit No. 1.

(The document referred to was thereupon marked for identification as Committee Exhibit No. 1.)

By Mr. Hall:

Q. The questions and answers contained in that transcript, and the statements made there by the Chairman and by the witness are a true representation of what occurred at that time?

A. It is, sir.

Mr. Hall: Your witness.

Cross examination.

By Mr. Silard:

Q. Mr. Thomson, the respondent, Mr. Scull, appeared before your committee on October 23 pursuant to the order of this Court rather than pursuant to a subpoena of the Committee, is that not right?

A. Correct. No subpoena was issued for the gentleman.

Mr. Silard: I have no further questions.

Mr. Hall: Commonwealth rests, Your Honor.

(Witness steps down.)

Mr. Silard: Your Honor, we move to strike the evidence introduced by the Commonwealth.

The Court: The motion to strike the evidence is denied.

(Committee Exhibit No. 1 was received in evidence.)

* * * * * * *

[fol. 158] Colloquy Between Court and Counsel

The Court: Gentlemen, the Court has heretofore considered and held that the Act of the Legislature involved is constitutional and is a valid enactment. The basic ground of contention so far as this proceeding is concerned is that the Act is constitutional on various grounds and having determined that the Act is a constitutional enactment, that Act provided specifically for the procedure which was adopted in this case and the respondent ordered to appear and testify.

That is in the nature of a process of the Court authorized by the Legislature and it appears to the Court that that order has been disobeyed. It was a lawful order and the ultimate responsibility for the action of the respondent in disobeying that order of course devolves upon him.

Under the circumstances the Court finds the respondent guilty of contempt and will impose a sentence of——

Mr. Silard: May I ask before sentence is imposed that we be afforded our right under the applicable statutes and decisions to mitigate the punishment and to swear the respondent to make a statement for that purpose?

Mr. Hassan: Before the Court does that I would like to inform the Court for the record that the postman this morning at 11 o'clock, quarter of 11 or 11 o'clock delivered to the Commonwealth's Attorney a copy of a motion to [fol. 159] quash the rule to show cause for continued return in which there is an allegation that the Commonwealth's Attorney is not in the case. I would like the record to show that in view of that allegation that any possible technicality of appeal that there might be at the time of the motion of the defendant for a continuance, the Commonwealth's Attorney appeared by order of this Court and the Commonwealth's Attorney is in this case in spite of the allegations in the motion, by order of this Court, and is prepared to carry on.

I want no technicality to show because I was not here when the case was called. I received no notice that there was any contention that the Commonwealth was not in the case until a quarter of 11. I would like the record to show that.

Mr. Silard: We have no technical objections to make here. Certainly if that was the case, and the Commonwealth says he was in fact prosecuting this proceeding——

Mr. Hassan: Your associate counsel knows that I appeared with him yesterday morning at 9:30 to argue the motion of continuance.

Mr. Silard: We will waive any defect based upon the allegation that the Commonwealth was not active in the case.

That will be waived, Your Honor, and we ask that respondent be permitted to make a statement with respect to mitigation of sentence.

[fol. 160] The Court: All right, the Court will note the appearance of the attorney for the Commonwealth in the case.

Whereupon, DAVID H. SCULL having been duly affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct examination.

By Mr. Silard:

Q. Mr. Scull, you are the respondent in this case, is that right?

A. I am.

Q. Prior to the time on September 20 and October 23 that you refused to answer the same questions of the Committee addressed to you, did you have advice of counsel with respect to your action?

A. I did.

Q. And was it the advice of your counsel that the Committee's action was invalid, that it was in conflict with the applicable Supreme Court decision, and that you had the constitutional right not to answer the Committee's questions? Was that the advice of your counsel?

A. That's correct.

Q. Mr. Scull, I ask you whether your refusal to obey the order of this Court of October 15, your alleged refusal, [fol. 161] contemptuous refusal to obey, reflected any contempt by you of the actual authority of this Court or any desire to be flagrant or malicious in disobedience of its order?

A. Not at all.

Q. Would you state to the Court in your own language just as simply as you can the grounds which prompted your action in refusing to answer the Committee's questions?

A. Well, Your Honor, I have pledged my allegiance to one Nation, indivisible, with liberty and justice for all, and in my mind that pledge binds me to work for liberty and justice for all people.

I am proud to be a Virginian and I do not say that in any (sic) dilutes or modifies my responsibility as an American citizen. Rather, it gives me a special responsibility to see that liberty and justice prevail in our own State.

And if any man anywhere is not free to use his talents and to open his purse in support of a cause which his heart tells him is just, then he is not free and the justice is limited.

Unhappily at the present time in Virginia, or in parts of our State, if a man be aiding a negro to establish in court his civil rights, rights which our Supreme Court has said may not be denied him on account of race, and if this support becomes publicly known, then he is likely to be subjected to the most intense social and economic pres-
[fol. 162] sures, loss of friends, loss of job or business, even to physical violence.

Now, the Virginia Legislature claims the right to inquire of a private citizen about his activities in support of such court action and if it can establish that right, then it can also publish that information or can let it be known to those who can make desired use of it, and so the action of the Legislature has the effect of unleashing illegal private vengeance on a person who has done nothing illegal and who, as I see it, merits instead public protection and thanks for having a disinterested concern for justice.

I felt that I was fully aware of the moral and, if you will, the religious issue which this posed for me when I received the Committee's summons which came quite to my surprise, but this was not the first time that I had had to consider this.

A year ago when the Legislature first considered the whole group of bills of which the one establish this Committee was one, I was one of very few citizens who went down to Richmond and protested in the public hearings, stating at that time that I felt this entire approach was unconstitutional.

So as I say, the moral issue was clear to me. Believing that the Committee's authority, its objectives and its methods were wrong, I did not feel that I could con-
[fol. 163] scientiously cooperate with it.

And perhaps unfortunately the fact that this Court directed me to testify did not change the moral issue. My attorneys did seek through every possible means in the very few days involved to effect an appeal so that I would not have to have even the appearance of disrespecting this Court or of the legal system.

I know that contempt of court is a legal and technical term but I certainly (sic) far from feeling the sort of sentiment which that term implies believe most fervently in the

importance of the independence and the integrity of the judiciary and if we can look at this from the broad, constitutional standpoint, as I think it will be, on appeal, I hope that this will prove to be another bulwark in upholding the independence and integrity of the judiciary.

In short, what I have done is in no way intended to indicate any contempt for this Court or for the judicial process.

Now, I have tried to tell you my motives and I realize I am somewhat at a disadvantage in this Court, having to appear outside my own county and area where I am better known. I hope it is clear to the Court that I am not an irresponsible obstructionist or trouble maker. I have lived in my home for seventeen years. I have my own business in Fairfax County. I am raising my family there, [fol. 164] intend to stay there. I have served in a number of civic and religious and other organizations in responsible positions and I am, I think, favorably known to many responsible people in this part of Virginia.

As my attorney pointed out, while I have based my stand on moral and conscientious religious grounds, I have had legal advice that I was also on sound legal ground and that this was in fact, given all the circumstances, the only way in which we could put an important constitutional principle to the test of judicial review by the higher Courts to which I believe it is entitled.

I thank the Court for listening to this explanation of my course of action.

Mr. Hall: Just a moment, Mr. Scull. I want to ask you a couple of questions.

Mr. Silard: I am not sure, Your Honor——

Mr. Hall: I thought you were through. You thanked him.

Mr. Silard: I believe the statement on sentence is the accused's traditional right and I don't believe there has ever been cross examination on it. I have no particular objection to it, but I don't believe it is proper procedure.

Mr. Hall: It is just this, Your Honor: He said that he had had advice of counsel. I want to know what lawyers advised him to disobey the orders of this Court.

[fol. 165] The Court: I think the proceeding speaks for

itself as far as that is concerned. The contention made in his behalf is that the Act and the proceedings under it are unconstitutional—deprivation of his constitutional rights—and the processes of the Court, of course, are open to him for the maintenance of those rights.

The ultimate determination of the question will determine whether you will have to serve or observe the sentence of this Court on your contempt.

On finding of contempts, and taking into consideration the matters which you have offered in mitigation, the Court will impose a sentence of ten days in the county jail and $50 fine.

Mr. Silard: Your Honor, would the Court impose separate sentence on civil and criminal contempts?

The Court: No, sir.

Mr. Silard: We ask Your Honor since this is a misdemeanor (sic) case and it is appealable under the applicable decision of the Supreme Court of this State, the sentence must be stayed in order to permit an appeal and bail granted and we ask that the sentence be stayed for purposes of permitting an appeal.

I don't believe that my authority will be challenged.

May I say, Your Honor, that I am the last lawyer in the world who could set a reasonable bail. I know nothing [fol. 166] about such matters but I did read the Sweezy case which is very similar and the bail set there was $500 pending the appeal and I suggest that in the absence of some objection by the Commonwealth a $500 bail would be a proper sum.

Mr. Hassan: If Your Honor please, I didn't catch the word of what case the gentleman was referring to in the $500 bond.

Mr. Silard: A New Hampshire case.

Mr. Hall: In the United States Supreme Court.

Mr. Hassan: If Your Honor please, I think this is the type of case that is going to require two types of bond. In view of that, I would have no objection to a $500 bond because there will have to be additional costs bond posted beyond the bond in connection with the sentence.

The Court: Well, the Court will stay the execution of

sentence and fix for a period of 60 days pending perfection of appeal the suspension bond at $500.

Mr. Silard: May respondent remain in my custody while bond is made?

The Court: Yes, sir.

(Whereupon, at 11:23 o'clock a.m. the hearing was concluded.)

/s/ Karl G. Sorg, Counsel for David H. Scull.

/s/ Leslie Hall, Chief Counsel for Committee on Law Reform & Racial Activities.

Tendered and signed this 11th day of December, 1957.

/s/ Emery N. Hosmer, Judge.

[fol. 167] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 168] COMMITTEE'S EXHIBIT #1

TRANSCRIPT OF PROCEEDINGS
OF HEARING BEFORE

COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES.

Circuit Court Room No. 3
Court House
Alexandria, Virginia

Wednesday, October 23, 1957

The Committee met, pursuant to notice, at 10:00 o'clock a. m., Chairman James M. Thomson presiding.

PRESENT:

James M. Thomson
Frank P. Moncure
R. M. Smith,
Members

Leslie Hall, Esquire, Chief Counsel

ALSO PRESENT:

Harold V. Kelly, Secretary

[fol. 169] PROCEEDINGS

Chairman Thomson: The Committee will come to order. Will the Secretary call the roll?

(The Secretary called the roll of the Committee with results as set forth below:)

PRESENT	ABSENT
JAMES M. THOMSON, Chairman	GEORGE S. ALDHIZER, III
FRANK P. MONCURE	GEORGE E. ALLEN, JR.
R. M. SMITH	CHARLES B. CROSS, JR.
	EARL A. FITZPATRICK
	MILLS E. GODWIN, JR.
	H. H. PURCELL
	LANDON R. WYATT

Chairman Thomson: A quorum being present, the Chairman declares the Committee is duly organized.

The first witness summonsed for today is Mr. David H. Scull.

Mr. Scull, do you affirm that the testimony you are about to give before the Committee on Law Reform and Racial Activities shall be the truth, the whole truth and nothing but the truth?

Mr. Scull: I affirm that what I say here will be the truth.

[fol. 170] Whereupon, DAVID H. SCULL was called as a witness and, having duly affirmed that the testimony he was about to give would be the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Examination by Mr. Thomson:

Q. Mr. Scull, are you a member of the Fairfax County Council on Human Relations?

Mr. Silard: Mr. Thomson, would the record reflect that Mr. Scull is accompanied here by myself, John Silard, as attorney; that we are here pursuant to an order of Circuit

Judge Hosmer of the Arlington Circuit Court; and Mr. Scull has a statement to make.

The Witness: I refuse to answer questions in this area for the reasons given in my statement before this Committee on September 20, 1957, and for the reasons set forth by my attorneys before the courts of Virginia and in the Supreme Court of the United States.

Chairman Thomson: You are aware, Mr. Scull, are you not, that the Supreme Court of Appeals of Virginia has refused to grant a stay of the request that you made of our order?

The Witness: Yes.

Mr. Silard: We will be glad to state for the record that [fol. 171] both the United States Supreme Court and the highest court of Virginia refused to stay the order of Judge Hosmer.

Chairman Thomson: And you are at this present time refusing to answer not just the question I directed to you then but any question which might be directed to you by the Committee this morning?

The Witness: Any of the questions which the Court ordered me to answer.

Chairman Thomson: Well, we fully intend to go beyond those questions, Mr. Scull, so any questions we might ask you this morning you would refuse to answer?

Mr. Silard: Mr. Thomson, I think we have made our statement and I think the record will reflect all that is necessary.

Chairman Thomson: You may have made your statement but the Committee is not through questioning the gentleman and he will remain until questioning has been completed. Whether he answers or doesn't answer the questions will be—

Mr. Silard: Excuse me, sir; we are not here under subpoena but we are here to answer subpoenas.

Mr. Hall: And the court order.

Mr. Silard: And the court order—to answer specific questions and we have made our statement as to those questions.

[fol. 172] Chairman Thomson: If there is any question in your mind about the authority to ask any further ques-

tions, we will issue a subpoena forthwith commanding him to answer questions this morning.

Mr. Silard: We have made our statement.

Will you come, Mr. Scull?

Chairman Thomson: Mr. Scull, will you refuse to answer any questions that the Committee might direct to you this morning?

The Witness: Any questions in this area of racial investigation.

Chairman Thomson: All right, sir.

Mr. Silard: Thank you, gentlemen.

Chairman Thomson: Appropriate proceedings will be instituted.

Mr. Scull, one further question before you leave for we do want to make certain you know what questions are being asked. You do have a copy of the transcript, do you not, of the questions that were asked to you before?

The Witness: That is at present in the hands of the Supreme Court as part of our filing. We presume it will be returned to us.

Mr. Silard: We are fully aware of the questions that were asked on the 20th of September and that those are the questions we have been directed to answer here, and Mr. [fol. 173] Scull has made a statement on those questions.

Chairman Thomson: Good enough.

(Messrs. Scull and Silard departed.)

Chairman Thomson: Mr. Hall, you are instructed as Committee Counsel to contact the Commonwealth's Attorney of Arlington County, Mr. William Hassan, and to institute the appropriate proceedings to hold Mr. David H. Scull in contempt for failing and refusing to obey the order of the Circuit Court of Arlington County which directed him to appear before this Committee on October 23, at 10 o'clock a. m., Eastern Daylight Time. Mr. Scull appeared at that time and in that place which was designated as the Corporation Court for the City of Alexandria, Courtroom No. 3, and refused to answer any questions which might be propounded to him by the Committee; and he specifically refused to answer any of the questions contained in the transcript of questions asked to him by the

Committee on September 20, 1957, as directed by the order of the Circuit Court of Arlington County.

(Whereupon, at 10:25 o'clock a. m., the hearing was recessed until 1 o'clock p. m.)

[fol. 174]

STATEMENT BY DAVID H. SCULL OF ANNANDALE, VIRGINIA, RACIAL ACTIVITIES AT A HEARING IN ARLINGTON, VIRGINIA, RACIAL ACTIVITIES AT A HEARING IN ARLINGTON, VIRGINIA, ON SEPTEMBER 20, 1957

Mr. Chairman: On September 29, 1956 the General Assembly of Virginia passed seven bills designed, broadly speaking, to restrict the free access to the courts of citizens who need to establish or maintain their civil rights. I believe that all of this legislation is unconstitutional and contrary to our heritage of common law, and that consequently this Committee, created by one of those bills as part of a whole legislative program of intimidation and harrassment, is without proper jurisdiction to pursue its inquiry.

I believe that it is not only my civil right but also under some circumstances my moral duty to counsel with a fellow-citizen as to his legal rights if he is ignorant of them, to offer him my support if he is fearful of asserting his rights, and to assist him financially if he is too poor to take the legal steps necessary to establish his rights. It should of course be the duty of the executive and the legislature to see that the rights of all citizens are protected. But when to the lasting dishonor of Virginia our Governor and our General Assembly have done everything possible to discourage our humblest citizens from enjoying their rights, it becomes especially the duty of the conscientious person to see to it that justice is done to the ignorant, the friendless and the poor. I make no claim to have done anything extraordinary in this way, but I believe that no agency of the government has the right to question or to interfere with any citizen in the exercise of such a civic role. If such intimidation were sanctioned, then no unpopular cause or helpless minority could be assured of free access to the courts as a protection against tyranny. A disinterested concern for justice for the person from whom one expects

no reward and who has no claim of blood relationship has through the ages been praised as one of the noblest virtues, and as a cornerstone of our system of laws. Such a disinterested act by a private citizen is made illegal by the legislation passed last year. I am proud to have protested this action in Richmond before it became law; I shall challenge it now.

Consequently, I shall decline to answer any question put by this committee on this subject unless and until the constitutional validity of its inquiry and the related legislation has been upheld by the proper judicial process.

I believe that furthermore any right which I may exercise personally and individually I may also exercise jointly with other citizens through a voluntary organization or through voluntary contributions, and that the state has no general right to invade the privacy of such voluntary association in order to accomplish unconstitutional objectives. I shall therefore equally decline to answer questions put by this committee on this subject, although as in the case of individual activities I shall willingly answer such questions as the highest court to which the matter may be referred shall decide are proper. I fully recognize the public right to know the officers and general purposes of every organization which sets itself before the public in any way. However, this is a matter of public information for every organization to which I belong or contribute, so that I have nothing to add to what the committee can easily obtain directly from any organization in which it may have an interest.

The subpoena served upon me goes beyond this Committee's power under its enabling act. I am not properly informed of the subject of inquiry. The question you ask me is beyond your jurisdiction.

For all of the foregoing reasons, and on the basis of all the rights accorded me under Sections 8, 11, and 12 of the Constitution of the Commonwealth of Virginia and the correlative provisions of the Federal Constitution, I respectfully decline to answer that question.

[fol. 175]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES, *Petitioner*,

vs.

DAVID H. SCULL, *Respondent*.

JUDGMENT—October 30, 1957

This cause came on to be heard on the 30th day of October, 1957, on the rule to show cause why the Respondent should not be held in contempt of the order of this court dated October 15, 1957, and upon the motion to quash or continue return on said rule, which motion was made on behalf of the Respondent; and the court having heard evidence and arguments upon said motion and upon said rule,

It is hereby ORDERED, ADJUDGED and DECREED that the Respondent's motion to quash or to continue return should be and hereby is denied; that it is the judgment and order of this court that the Respondent be and he hereby is found guilty of civil and criminal contempt of the order of this court of October 15, 1957; and

It is the judgment of this court that the Respondent should be and he hereby is sentenced to serve ten days in the Arlington County jail and to pay a fine of $50.00 and costs, to all of which rulings, orders and judgments the Respondent, by counsel, duly excepted; and

It is further ORDERED that the execution of this judgment and sentence be and it hereby is suspended, conditioned upon the filing of a petition for appeal or writ of error from [fol. 176] the Supreme Court of Appeals of Virginia; within 60 days from the date of this order and

It is further ORDERED that the Respondent be admitted to bail in the sum of $500.00 during the suspension of this order; and

It is further ORDERED that the Attorney for the Commonwealth be permitted to enter his appearance as counsel of record for the Petitioner.

Entered this 30th day of October, 1957.

Emery N. Hosmer, Judge

Seen:

Leslie Hall, Counsel for Petitioner

Karl G. Sorg, Counsel for Respondent

[fol. 178] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON, COMMONWEALTH OF VIRGINIA

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR—
Filed November 12, 1957

Karl G. Sorg, Counsel for the Respondent, David H. Scull, hereby gives notice of his intention to petition the Supreme Court of Appeals of Virginia for a writ of error and supersedeas from the order and judgment of this Court entered on the 30th day of October 1957 in this case, and sets forth the following assignments of error:

1. Respondent cannot properly be convicted of either civil or criminal contempt for refusing to obey this Court's order of October 15, 1957, which compelled respondent to answer a legislative inquiry violative of his rights under the Fourteenth Amendment to the United States Constitution and denied respondent his Constitutional right to appeal.

2. This Court was without jurisdiction to try respondent for contempt and respondent's conviction is erroneous because this Court's refusal, in its order of October 15, 1957, to stay its command requiring respondent to answer the Committee's questions on October 23, 1957 and thereby finally to surrender the Constitutional privileges which he asserted, denied respondent his Constitutional right of ap-

peal for the vindication of his rights under the federal Constitution.

[fol. 179] 3. This Court was without jurisdiction to try respondent for contempt of its order of October 15, 1957 and petitioner's conviction for contempt was erroneous, because such order was erroneous, null and void for the reasons stated in the Notice of Appeal and Assignments of Error filed by the respondent on October 18, 1957 from the entry of such order, as follows:

A. The questions which the Respondent, David H. Scull, was required to answer were not within the literal language of the authorizing statute (1956, Extra Session, Chapter 37); Chapter 4, Title 30, Code of Virginia, 1950, as amended) because said questions did not deal with racial litigation.

B. The Court erred in failing to require the Committee to meet its burden of showing why the information sought from the respondent was necessary in the furtherance of its inquiry.

C. The Court erred in failing to hold that the authorizing statute and the action thereunder by the Committee in regard to the respondent violates the 14th Amendment of the United States Constitution in the following respects:

(1) The Committee's action was arbitrary and capricious in that it acted without published or other rules and subpoenaed David H. Scull on the basis of unverified information to answer questions in the highly explosive area of racial relations.

(2) The Committee was established and given investigative authority, as part of a legislative program of "massive resistance" to the United States Constitution and the Supreme Court's desegregation decisions, in order to harass, vilify, and publicly embarrass members of the NAACP and others who are attempting to secure integrated schooling in Virginia.

(3) The purpose and effect of the inquiries of the Committee, including those addressed to the respondent, is [fol. 180] denial of access to the courts for vindication of

Constitutional rights, by harassment and exposure of school integration plaintiffs and members of the organization which is most actively engaged in litigating the integration suits.

(4) The inquiries addressed to respondent violate his rights of free speech, assembly, and petition because they repress freedom of expression and constitute an unjustified intrusion into and restraint upon his association with others in legal and laudable political and humanitarian causes.

(5) The demand for answers made upon respondent by the Committee is arbitrary and unreasonable inasmuch as there is no justification for the special and selective investigatory authority granted to the Committee, and nothing in that authority renders pertinent the demand made upon respondent to disclose his civic and political associations and activities.

(6) The Committee's authorizing resolution is too vague and imprecise to justify compelled testimonial disclosures.

(7) The Committee failed, despite proper inquiry made by respondent, to inform him in what respect its questions were pertinent to the subject under inquiry by the Committee.

(8) The information sought from respondent was neither intended to, nor could reasonably be expected to, assist the Legislature in any proper legislative function.

D. The Court erred in ordering the respondent to answer the questions of the Committee because said order is in violation of the respondent's rights under the 8th, 11th and 12th sections of the Constitution of Virginia for the reasons set forth in the third assignment of error herein.

E. The Court erred in ordering the respondent to answer questions of the Committee by failing to consider the respondent's refusal to answer as being predicated on "legal [fol. 181] cause" within the terms and the meaning of Chapter 37 of the Acts of the General Assembly, 1956, Extra Session.

F. The Court erred in refusing to grant the respondent a stay of its order requiring him to answer the questions

of the Committee, said refusal having the effect of jeopardizing the respondent's right of appeal under the statutes of Virginia and Section 88, Article VI of the Virginia Constitution.

Karl G. Sorg, Counsel for Respondent

Joseph L. Rauh, Jr., John Silard, Of counsel, 1631 K Street, N. W., Washington 6, D. C.

Certificate of service (omitted in printing).

[fol. 190]

IN THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

ORDER REFUSING PETITION FOR WRIT OF ERROR—January 20, 1958

The petition of David H. Scull for a writ of error to an order entered by the Circuit Court of Arlington County on the 15th day of October, 1957, in a certain proceeding then therein depending, wherein Committee on Law Reform and Racial Activities was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the order aforesaid seen and inspected, the Court being of opinion that the said order is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the order of the said Circuit Court.

[fol. 191]

IN THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

ORDER REFUSING PETITION FOR WRIT OF ERROR—January 20, 1958

The petition of David H. Scull for a writ of error to a judgment rendered by the Circuit Court of Arlington County on the 30th day of October, 1957, in a certain proceeding then therein depending, wherein Commonwealth of

Virginia, ex rel. Committee on Law Reform and Racial Activities was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said Circuit Court.

[fol. 192] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 194]

SUPREME COURT OF THE UNITED STATES

No. 929, October Term, 1957

DAVID H. SCULL, Petitioner,

vs.

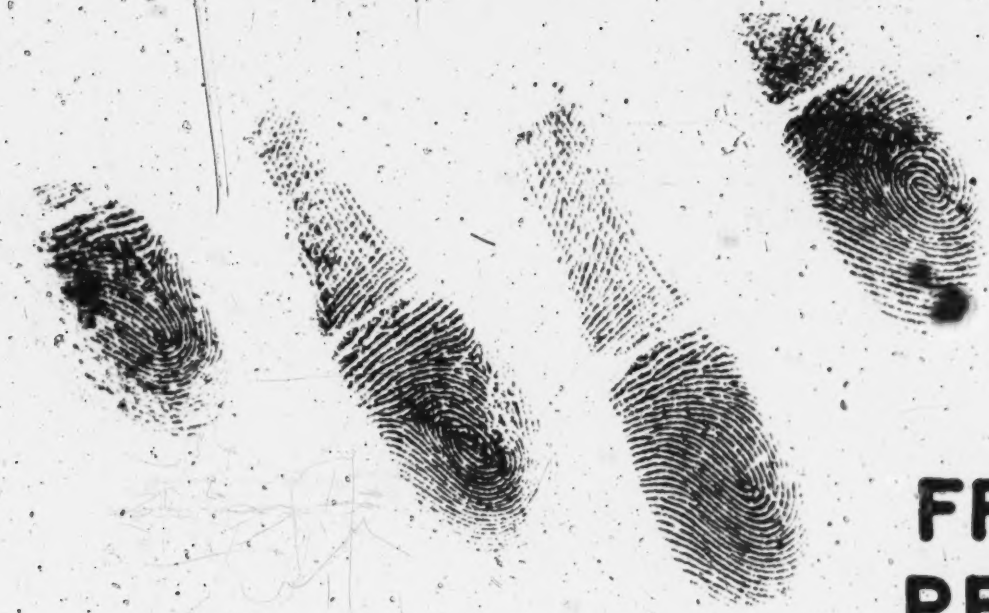
COMMONWEALTH OF VIRGINIA ex rel. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES.

ORDER ALLOWING CERTIORARI—June 9, 1958

The petition herein for a writ of certiorari to the Supreme Court of Appeals of the Commonwealth of Virginia is granted and the case is assigned for argument immediately following No. 778.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

10/15/57 ✓ Respondent's Exh. 1
/s/ D. M. H. Judge.



FROM THEIR OWN PROPAGANDA

The SHOCKING TRUTH!

about NORTHERN VIRGINIA'S PARENT-TEACHER GROUPS

Vol. I, No. 1 February 1, 1955

REPORTING:....

A Steering Committee, authorized by a group of citizens of northern Virginia, meeting at St. Clements Church, 1701 Quaker Lane, Alexandria, Va., on Dec. 18, respectfully submits the following report.

(Signed) Jack Orndorff
Chairman, Pro Tem

The Steering Committee has carefully considered and discussed the part which concerned and conscientious citizens can best play in helping to achieve the community adjustments necessary to protect the educational and Constitutional rights of all citizens as recently defined and interpreted by the Supreme Court of the United States. Our conclusion is that the development of some means for sharing facts and experiences is not only the most immediate practical step, but is also the activity most consistent with the best American tradition for developing sound public policies.

In the following pages, therefore, we present a NEWSLETTER which we propose to have published by a CITIZENS CLEARING HOUSE ON PUBLIC EDUCATION. Other activities should include the encouragement of public discussions, and of official planning and initiative for fulfillment of the law and advancement of human rights within a responsible community. Speakers should be made available and forums arranged at every suitable opportunity.

A FAIRFAX PTA STATES ITS PRINCIPLES

Last Fall, the Woodburn PTA pledged its support to state officials in efforts to adjust the problems of integration "with a minimum of emotion and a maximum of good citizenship." Following this action, a committee was set up under the chairmanship of Charles Sternes, who reports that members of all shades of opinion now are tackling the committee's job, equally determined not to prejudge any issues and not to allow discussions to degenerate into "emotional binges". Committee objectives, at least for the present, are modest and limited, Sternes said. First, it is trying to gather all possible facts about the school population within its own boundaries----the number of children of all races who would attend school on an integrated basis; the cultural economic and hygenic levels in the area, etc.

Second, the group has a member charged

ALEXANDRIA PTAS WORK TOGETHER

In Alexandria, the two PTA Councils work on common concerns through a coordinating committee of six. To study and prepare for integration, this group has been enlarged to 18, one representative from each of the 12 white schools, two from each of the three Negro schools. The monthly meetings of the committee are being rotated among the various schools-a practice which not only gives the members an opportunity to compare facilities, but also calls to wider attention the committee's activities.

To date, these include a workshop where teachers from two already-integrated local schools have spoken--Burgundy Farms, a private cooperative school, and the Government operated school at Ft. Belvoir. The Committee is also making use of two films which it recommends--"High Walls" and "The Tov Maker". Fact sheets presenting materi-

Dear Friend and Patriot:

The deep feeling of Christian Principles with which the good people of Virginia are imbued has caused us to overlook the totalitarian operations in force in our Commonwealth. Many of our long-established institutions have become infiltrated by persons who seek to destroy our Virginia and American heritages of Freedom and Constitutional Government.

These people have been working to undermine us while we have treated them with Christian forbearance. The time has come for us to inform ourselves and others of the dangers which have developed and make our stand against totalitarianism.

The following material is propaganda disseminated through Box 218, Annandale, Va. (David Scull), and promoted by the Fairfax Federation of Parent-Teacher Associations. The information is almost self-explanatory. It has not been changed. It was photographed from their material.

You will note that communications with the N.A.A.C.P., Southern Regional Council, Clearing House, B'nai B'rith, Council on Human Relations, American Friends, and many other pro-integration groups are funneled through Box 218, Annandale, Va., and membership is encouraged if not actually suggested by the P.T.A. Federation.

The material enclosed was received by writing to Box 218, Annandale, Va., at the suggestion of the P.T.A. Federation. You may do the same.

These "professional" educators are not only dangerous in the P.T.A. organization but remember: THEY ARE THE PEOPLE WHO TEACH OUR CHILDREN!!!!!!

Won't you study the material, which is in generally chronological order, and find out for yourself if the P.T.A. in your community is in the same situation? We will be happy to inform you concerning any elaboration or verification required in studying similar situations all over Virginia.

Our children would be better off not attending any school than to be under the instruction of people who use the P.T.A. to destroy our heritage.

We congratulate Senator Byrd and others who have taken the position of steadfast oppostion to the evil forces in our midst and hope we will all have the courage to do the same.

In times when wicked men are doing wicked things, the greatest blame lies not with the perpetrators but on those complacent bystanders who timidly tolerate the evil acts.

We would appreciate your comments on what we can do to alleviate this deplorable condition and your opinion of the material we have presented.

FAIRFAX CITIZENS' COUNCIL Rt. 2 Box 592 McLean, Virginia

NATIONAL EDUCATION ASSOCIATION

UNESCO

"Poison of Nationalism"

INTEGRATED SCHOOLS WASHINGTON & VIRGINIA

AMERICAN "FRIENDS" SERVICE COMMITTEE

COMMUNITY COUNCIL FOR "SOCIAL" PROGRESS

Katharine Stone

CLEARING HOUSE

"SAVE OUR SCHOOLS" COMMITTEE

- Warren Quenstedt
- Omer Hirst
- Armistead Booth
- John Webb
- Dean Brundage
- Joseph Freehill
- C. Turner Hudgins
- David Scull
- Albert Smoot
- Anne Wilkins
- Rev. W. Russell Bowie
- Mrs. Mollie Kanarek

FAIRFAX COUNTY PARENT TEACHER ASSOCIATION

FAIRFAX FEDERATION OF P.T.A.

R

INTEGRATION WORKSHOP

E. B. Henderson

P.O. BOX 218

ANNANDALE, VIRGINIA

DAVID SCULL

FAIRFAX COUNTY COUNCIL ON HUMAN RELATIONS
(Edwin Lynch)

SOUTHERN REGIONAL COUNCIL

FC

SOUTHERN CONFERENCE ON HUMAN WELFARE

COMMUNIST FRONT-PER LOUISIANA INVESTIGATIONS

WHO IS D

CLEARING HOUSE PLANS COMPLETED

Meeting on Lincoln's Birthday at St. Clement's Church, Alexandria, citizens from Arlington, Alexandria, Falls Church, and Fairfax completed plans for a Citizens Clearing House on Public Education. Principal function of the Clearing House will be to furnish facts and information to aid the community adjustments necessary for compliance with the Supreme Court decisions regarding integration of public schools.

Those who participated in setting up the Clearing House form an Advisory Committee which elected the following members to serve on a steering committee: Jack Ornderff, Chairman, Paul Anderson, Treasurer, Ralph Dungen, J. Sidney Holland, Mrs. Hattie Hopkins, Mrs. Barbara Marx, Mrs. Charles E. Plumer, David R. Scull, Edward Strother, and Mrs. Carolyn Ware. Other individuals in accord with the purposes and principles of the Clearing House are invited to join. Membership fee is one dollar and covers subscription to the bulletin.

Mrs. Claudia Pitts, formerly secretary of the Community Chest, stated that most Chest agencies have bi-racial directorships and offer their services without distinction to both races. Girl Scouts have been vigorous in their attempts to see that county-wide activities are non-segreated, although as yet there are no mixed troops. There has been no Negro Boy Scout troop for 10 years.

Edward W. Kelly described the degree of integration within Catholic groups. Parochial schools throughout the state, including Catholic High School in Norfolk, an area of Negro population, are now open to Negroes. Locally, four Negroes are among the directors for Catholic Charities. Mr. Kelly stressed that his church's interest in integration comes from conviction that discrimination is morally wrong and that religious people must strive to apply the principles of brotherhood which they profess.

Mrs. Geraldine Davis and Mrs. Anne Walker, speaking from experience in the Council of Church Women, strongly seconded Mr. Kelly. The Council is a locally integrated Protestant group, as are the Ministerial Association and the Council of Churches. Dr. E. B. Henderson was moderator.

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Segregation and the Schools: factual study and evaluation of bi-racial education with chapters on school costs, economic and social history, population changes, etc. Order Public Affairs Pamphlet 209, 22 East 38th St., New York, N. Y.

AREA YOUTH TAKES A CALM "LOOK AT INTEGRATION"

Fifteen high school students, white and Negro, sat around a table on Sunday night February 20, and talked freely and frankly about the adjustments involved for young people themselves in complying with the Supreme Court decision outlawing segregated public schools.

"Listening in" on the discussion was an audience, also mixed, composed of one hundred young people and their adult advisors from Beverly Hills Community Church, Christ Church Episcopal, Arlington Jewish Center, Robert's Chapel, Alexandria, St. Agnes Catholic Church, Westminister Presbyterian Church, and the Unitarian Church of Arlington, whose youth group members were hosts for the meeting.

Dr. Julius Schreiber, Washington psychiatrist and past director of the National Institute of Social Relations, moderated the discussion. Three students from Washington gave the group the benefit of their experiences in already integrated schools. These were Claudia Knox and Richard Caulk of McKinley and Eric Drew, former Hoffman-Boston pupil now enrolled in Western High School. Drew described the anxieties he had felt over being one of a very small minority of Negroes in a large white student body, and his relief on finding himself accepted in a normal, matter-of-fact way, free of any unpleasant incidents.

Bob Dalton, Fairfax Senior and Milton Newberry, of Washington-Lee, agreed that "the loud vocal minority" in their schools which expressed opposition to integration would "go along without anything but talk when the chips are finally down."

Other students taking part in the discussion were Jodie Dunman, Washington-Lee, Jocelyn Hunter, Wakefield, Lillian Browne, Hoffman-Boston, Pam Wharton and Davis Hall, George Washington, Betty Earl and Wendell Bates, Parker Gray, Larry Mennich and Kenneth Valdes, Falls Church, and Harry Taylor of Luther Jackson.

Before the discussion, Phillip Lerman of the Anti-Defamation League of B'nai B'rith, conducted one of his well-known "rumor clinics," a technique which illustrates how individual backgrounds and experiences color reactions to new situations. Mr. Lerman also reported on the way in which false rumors were spread by adults during "student strikes" against integration in Washington last Fall. At that time, Lerman was one of a team of observers sent into troubled areas to obtain truthful accounts of the difficulties.

FAIRFAX COUNTY
PARENT TEACHER ASSOCIATION

FAIRFAX FEDERATION OF
P.T.A.

NEGRO P.T.A.

RACIALLY MIXED

INTEGRATION WORKSHOP

E. B. Henderson

P.O. BOX 218

ANNANDALE, VIRGINIA

DAVID SCULL

N.A.A.C.P.

ZIONISTS

B'NAI B'RITH

RACE MIXING

"Christian Thing
To Do"

FAIRFAX COUNTY COUNCIL
ON HUMAN RELATIONS
(Edwin Lynch)

SOUTHERN REGIONAL COUNCIL

FORD FOUNDATION

URBAN LEAGUE

Race Mixing

SOUTHERN CONFERENCE ON
HUMAN WELFARE

COMMUNIST FRONT-PER
HOUSE UN-AMERICAN
ACTIVITIES COMMITTEE

COMMUNIST FRONT-PER
LOUISIANA INVESTIGATIONS

WHO IS DAVID SCULL ???

Vol. I,. No. 3 April, 1955

CIVIC SPADEWORK PREPARES THE GROUND FOR ORDERLY INTEGRATION

... IN ALEXANDRIA

By unanimous vote on April 16th, the League of Women Voters of Alexandria chose as its chief local activity for the coming year to "work for the orderly implementation of the Supreme Court decision affecting public education in Alexandria."

Mrs. Colgate Prentice, education chairman, said, "Our members want to work very hard with other community groups to see that Alexandria takes the kind of preparatory steps that have been so useful in Washington and other areas that have integrated. We also want to be in a position to support our public officials in their efforts to develop policies to assist integration."

VIRGINIA CHAMBER OF COMMERCE OFFICIAL SAYS INTEGRATION WILL HELP BUSINESS

Roanoke (AP) - Integration of the races will pose a social problem for the South but the end of segregation will mean economic progress for the area, southern chain store executives were told here last night by the executive director of the Virginia State Chamber of Commerce.

Verbon Kemp, of Richmond, told the store officials from four southern states that desegregation will put more purchasing power in the hands of Negroes and thus "react to the economic betterment of the South."

"At the regular January meeting of the Sleepy Hollow School PTA, the membership voted 84 to 61" (in favor of this resolution). "The orderly integration in the public school system as presently constituted be accomplished in accordance with the Supreme Court decision; further, that discretion be left with each local area, city or county as to the method and means for completing integration."

.... IN ARLINGTON

Arlington's extensive bi-racial activities in education, church, health and welfare areas will assist greatly in the transition from a segregated to an integrated public school system, community leaders believe.

As first speaker in a panel discussion at the Community Council on Social Progress, Sunday, April 10, Mrs. Edith Burton reviewed the extent to which school operations area already functioning on an integrated basis. Mrs. Burton is a member of the citizens committee appointed by the School Board to study the Supreme Court decision outlawing segregated schools. She reported that since 1949 when William T. Early became superintendent of schools, all faculty meetings and committees, in-service training classes and teacher institutes have been integrated. Thus administrators and teachers have already learned to work together. This would ease the joining of student bodies.

White and Negro students, Mrs. Burton pointed out, have also had some chance to engage in integrated activities through projects civic groups sponsor in the schools. These included the safe-driving contest inaugurated by the Junior Chamber of Commerce, trips to U.N. headquarters sponsored by the League of Women Voters, and art activities led by the American Association of University Women. The Community Council on Instruction, other county-wide advisory committees to the School Board, and the County Council of PTAs are also biracial, Mrs. Burton said.

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The Montgomery County, Md. PTA Council has asked its Board of Education to develop plans for integration of the 47,000 pupils "As soon as possible."

THE ABOVE ORGANIZATIONAL CHART EXPLAINS THE WEB OF INTERCONNECTION BETWEEN THE POLITICIANS, DO-GOODERS, CHURCH PERSONALITIES, CRACK-POTS AND LATTER DAY RECONSTRUCTIONISTS, BOTH CARPETBAGGERS AND LOCAL "TALENT".
Rev. W. Russell Bowie has many citations of affiliation with communist fronts.
Mrs. Mollie Kanarek was named as a communist in Federal Investigation testimony.

FAIRFAX HIGH SCHOOL

COME ONE COME ALL CAREER NIGHT APRIL 13TH 8 P M

PARENTS, STUDENTS AND FRIENDS: THE S. P. T. A. AND YOUR SCHOOL ADVISORS HAVE PREPARED A PROGRAM TO ANSWER QUESTIONS FOR YOUR FUTURE.

STUDENTS: All of you are curious about your future How much do you know about your chosen field? You have decided on your College and Field but WHO WHAT WHERE WHEN DO YOU GO FROM THERE?

PARENTS: How can you help your student choose his or her career? Find out the many choices and opportunities open to those who prepare wisely. What are their interests and talents? GET THE FACTS.

The regular S. P. T. A. meeting will start at 8 p m in the Auditorium Refreshments will be served in the Cafeteria from 7:30 until 8 p m.

There will be two periods for the Career Sessions so that you may have the opportunity to visit more than one.

A Workshop on "The Supreme Court Decision Against Racial Segregation In The Schools" will be held on Saturday, April 30th at the Annandale Elementary School. Registration will start at 12:30 p m. Fee--$1
All those interested in attending, please notify either Mr. C. R. Frum, or any member of the S. P. T. A. Executive Committee in order that the approximate number planning to attend can be determined.

Fairfax County Federation of P-TA's
Workshop on Supreme Court Decision
on public schools

April 30, 1955

PROGRAM

12:30 - 1:00 Registration

1:00 Introduction

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Fairfax County Federation of P-TA's
Workshop on Supreme Court Decision
on public schools

April 30, 1955

PROGRAM

12:30 - 1:00 Registration

1:00 Introduction
Legal background of the decision

1:30 Some Views of Public Opinion
Mr Benjamin Muse, Manassas
Rev C. Emerson Smith, Richmond

Summary of Material from State Superintendent's Report
Mrs Louise Palmer

2:15 Refreshments

2:45 Some Experiences in Education
Mr Robert Walker, Fairfax, moderator
Dr Houston R. Jackson, Baltimore
Mrs Raemy Burton, Arlington
Mrs Sidnie Greenleaf, Alexandria

3:45 Population distribution in Fairfax County
Mr Robert Mangan, Vienna

Description of County School and Community Health Program
Dr Harold Kennedy, Fairfax

Fairfax County Federation of P-TA's
Workshop on Supreme Court Decision
on public schools

April 30, 1955

If you want to be better informed read:

FOR CURRENT DEVELOPMENTS:

1. Your daily newspapers, which carefully report developments in Washington area, plus editorials and column comment.

2. Southern School News, a factual monthly publication of the Southern Education Reporting Service (which is financed by a grant from the Fund for the Advancement of Education, an independent agency established by the Ford Foundation). The "news beat" for SERS consists of the 17 states and the District of Columbia affected by the Supreme Court decision of May 17, 1954, and developments in education arising therefrom. Subscriptions are free upon request, SERS, P. O. Box 6156, Acklen Station, Nash ville, Tennessee.

3. The Clearing House on Public Education, edited by Mrs Charles E. Planck, a monthly newsletter reporting developmer in Northern Virginia. Subscriptions are $1 a year from Citi zens Clearing House on Public Education, P. O. Box 218, Annandale, Va.

FOR BACKGROUND MATERIAL

1. The P-TA kit on the Supreme Court Decision with material on both specific and general problems arising from the Supreme Court Decision. The kit has been distributed to P-TA units.

2. The summary, in considerable detail, "Developments in Virginia as a result of the Supreme Court ruling against racial segregation in public schools" prepared by the Democratic Women of Mount Vernon, 167 Monticello Road, Alexandria, Va.

3. "Facts concerning segregation and integration", a study made by the Alexandria Council of P-TA's working with the Alexandria City-Wide Parent-Teacher Council, Mrs S. W. Livingston, chairman of the Coordinating Committee.

4. "Facts Concerning segregation and integration", issued by the Arlington, Virginia, public schools, November 1954.

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5. "Progress of Colored Americans in Metropolitan Washington", a summary of accomplishments of Washington area Negroes. Copies may be had at 25¢ for 5 (minimum order) at P. O. Box 218, Annandale, Va.

6. Schools in Transition, edited by Robin M. Williams, Jr. and Margaret W. Ryan (Chapel Hill, University of North Carolina Press, 1954). Reports of some recent experiences of twenty-four communities in states bordering the South as they have moved from racially segregated toward integrated public schools.

If you really want to study integration problems:

The National Conference of Christians and Jews has available many free or inexpensive pamphlets and booklets by writers of standing in their fields of science, education, and religion. Most pertinent, perhaps, among the newer materials are the ten "Intergroup Education Pamphlets", the first of which, "Readings in Intergroup Relations" by Helen F. Storen, is a selected reading list, briefly annotated. Many of the books suggested on Dr. Storen's list may be borrowed from the library of the NCCJ Washington office, Room 820, Southern Bldg. 1425 H Street, N. W., Washington, D. C.

PROGRESS OF COLORED AMERICANS IN METROPOLITAN WASHINGTON

First it should be understood that the following comments are fragmentary. Even Who's Who in Colored America, a volume of over 3,000 biographies, is woefully lacking in many areas.

Despite legislative barriers and prejudicial practices in America, the progress of the Negro has been phenomenal. Because the press does not emphasize the social, civic, and economic life of the Negro, while at the same time it does place undue emphasis on delinquency and the identification of criminals by race, few average citizens can learn of the culture and standing of the Negro in society. This, of course, tends to perpetuate a concept of the Negro which is far removed from reality.

At the present time especially grave concern is developing in other countries over this inconsistency; and with the world becoming smaller, this can no longer be concealed

As an example, the following may introduce for the first time some outstanding Negroes in Metropolitan Washington who should already be known to you.

Signed: E. B. Henderson
Vice President
Va. State Conference
N.A.A.C.P.
307 W. Fairfax Street
Falls Church, Va.

February, 1955

* * * * * * * * *

FOR ADDITIONAL COPIES, WRITE P. O. BOX 218. ANNANDALE, VA.
ENCLOSE 25¢ FOR 5 COPIES (MINIMUM ORDER)
$4 PER HUNDRED

When restrictions to decent living are removed from the statute books of suburban communities, disbursement of Negro talent will alleviate saturation in the Metropolitan area

Government - All through the District and Federal services Negroes are making good. Political appointees change with every new administration but bring to this city more of the accomplished colored men and women from all over the nation.

THE

CLEARING HOUSE

Published monthly by the Citizens Clearing House on Public Education. Editor: Carolyn H. Planck. Editorial Address: 3234 N. Pershing Dr., Arlington. Or Phone JE 2-4387 (Mrs. Barbara Marx). Subscription address: P.O. Box 218, Annandale, Va. Price $1 per year. Make checks to C. C. H. P. E.

A FAIRFAX PTA STATES ITS PRINCIPLES

Last Fall, the Woodburn PTA pledged its support to state officials in efforts to adjust the problems of integration "with a minimum of emotion and a maximum of good citizenship." Following this action, a committee was set up under the chairmanship of Charles Sternes, who reports that members of all shades of opinion now are tackling the committee's job, equally determined not to prejudge any issues and not to allow discussions to degenerate into "emotional binges". Committee objectives, at least for the present, are modest and limited, Sternes said. First, it is trying to gather all possible facts about the school population within its own boundaries----the number of children of all races who would attend school on an integrated basis; the cultural economic and hygenic levels in the area, etc.

Second, the group has a member charged with keeping the PTA well informed on all legal developments and on any time tables that may be set for compliance with the ruling of the Court.

Third, to reduce to more compact and usable form the wealth of material available for study, the committee is working to sort out the most pertinent facts on the major questions involved in integration. Special attention will be paid to experience in localities where integration has been achieved, with guidance sought from both their difficulties and successes.

"However," says Mr. Sternes, "Our basic premise is that each small community must seek first to see itself in relation to the adjustments the Court decision will necessitate. If each small area does its job well it will then be best able to contribute to the ultimate solution of county and state problems."

ALEXANDRIA PTAS WORK TOGETHER

In Alexandria, the two PTA Councils work on common concerns through a coordinating committee of six. To study and prepare for integration, this group has been enlarged to 18, one representative from each of the 12 white schools, two from each of the three Negro schools. The monthly meetings of the committee are being rotated among the various schools-a practice which not only gives the members an opportunity to compare facilities, but also calls to wider attention the committee's activities.

To date, these include a workshop where teachers from two already-integrated local schools have spoken--Burgundy Farms, a private cooperative school, and the Government operated school at Ft. Belvoir. The Committee is also making use of two films which it recommends--"High Walls" and "The Toy Maker". Fact sheets presenting material on such questions as the qualification required of all teachers are now in course of preparation from answers furnished by the City Board of Education. Mrs. Mary Livingston is chairman of the group; Mrs. Edith Turner is secretary.

The Fairfax Federation of fifty PTAs, of which six are Negro, has a complete study kit and circulating library of integration materials prepared by its legislative chairman, Mrs. Jane Wellemeyer.

Southerners will like Integration: Charlottesville housewife tells why in the Saturday Evening Post, Feb. 19.

Changing Patterns in the South: trades progress and growth of democracy in last decade in such fields as voting, interstate travel, the armed forces, secondary and higher education. Order from Southern Regional Council, 63 Auburn Ave., N. E., Atlanta, Ga., 50¢.

THE COMMUNITY COUNCIL FOR SOCIAL PROGRESS
Arlington, Virginia

Ruth W. Tryon, President

The Community Council for Social Progress cordially invites you and interested members of your association to a meeting on the subject, "PROGRESS TOWARD INTEGRATION IN ARLINGTON", at 7:30 P.M., Sunday, April 17, at the Unitarian Church of Arlington, Virginia, 4444 Arlington Boulevard.

Dr. E. B. Henderson will serve as Chairman of a panel of speakers who will report on integration educational, health, welfare, and religious groups and organizations in the County.

Mrs. Edith Burton, Chairman of the Research Subcommittee of the School Board Committee on Integration, will present the progress in integration in educational and similar organizations, such as the Arlington County Council of P.T.A.'s, the Arlington Public Libraries, the American Association of University Women, the Arlington League of Women Voters, the Citizens Committee for School Improvement, the Teachers Council on Instruction, the Community Council on Instruction, and Advisory Councils to the School Board on Special Problems.

Mrs. Claudia Pitts, Member of the Board of Trustees of the Arlington Community Chest, will review health and welfare groups in the County which are integrated, such as the Arlington Community Chest and Council, the Arlington Medical Society, the Family Service of Northern Virginia, the Arlington Tuberculosis Association, the Girl Scout Boards and Committees of Northern Virginia, the Arlington Cancer Society, the Mental Hygiene Association, and the American Red Cross.

Speaking on integration in Catholic groups in the County will be Mr. Edward W. Kelly, President of the Catholic Charities of Northern Virginia. Mrs. Philip Sullivan, President of the Arlington Council of Church Women, has been asked to present a report for Protestant groups.

The Community Council for Social Progress believes these reports will be of especial interest to your group and hopes many of you will be able to attend.

C O P Y

To Any Who May Have Been Interested

in

The Citizens' Clearing House on Public Education

As you will recall, The Clearing House was set up a little less than two years ago as a medium for exchange of information on activities and experiences in our Northern Virginia community pertinent to compliance with the Supreme Court ruling re segregated schools.

In the first year of its existence, nine issues of The Clearing House were published and widely distributed to key citizens in this

Civil Liberties To Be Discussed

The Tenth District Woman's Democratic Club will meet Thursday at St. George's Episcopal Church, North Nelson street and Fairfax drive, Arlington, to discuss civil liberties in Virginia.

Seven bills passed in the September special session of the Virginia Legislature, which are being contested, will be discussed by Arlington Delegate Kathryn Stone, who opposed the measures, and by Oliver E. Stone, Washington attorney, who heads a civil liberties subcommittee of the Friends' Committee on National Legislation.

The meeting, with Mrs. Mary Marshall as program chairman, will start at 7:45 with dessert and coffee, and the discussions will begin at 8:30. Mrs. Elizabeth Campbell, club president, will preside.

Mrs. Stone Urges Patient Study

The Northern Virginia Regional Planning Commission should undertake a thorough study of the problems of careing for mental patients, a member of the Virginia House of Delegates said last night.

Kathryn H. Stone of Arlington proposed that clinics be set up for care of patients after they have been released from mental hospitals. These clinics could be set up inexpensively with "voluntary agencies furnishing space and assistance," she said.

Speaking before the Community Council for Social Progress at the Unitarian Church in Arlington, Mrs. Stone said the separation of business administration from the other operations of the mental hospitals is producing unrest and loss of morale among institution personnel. She called for the repeal of last year's legislation which created the dual authority.

We have had a meeting
of the Virginia Friends
yet but you are on the
list. Would be glad
to take you to Meeting
some First Day if
You'll give us a call.
JE 2-1068.
Dave Scull

THE HAND-WRITTEN NOTE FROM DAVE SCULL WAS RECEIVED FROM BOX 218, ANNANDALE, VA. OTHER AMERICAN FRIENDS MATERIAL SHOWS THE DANGEROUS OPERATION OF THAT GROUP.

Sponsoring Organizations

American Civil Liberties Union

American Jewish Congress,
National Capital Chapter

Americans for Democratic Action

American Veterans Committee

Catholic Interracial Council

Congregational Christian Churches,
Social Action Committee

Consolidated Parents

Federated Catholic Social Action Guild

Industrial Union Council, C.I.O.

Japanese-American Citizens League

National Council of Negro Women

St. Peter Claver Center

Unitarian Fellowship for Social Justice

Washington Ethical Society

Washington Fellowship

Washington Interracial Workshop

Women's Alliance, All Souls Church

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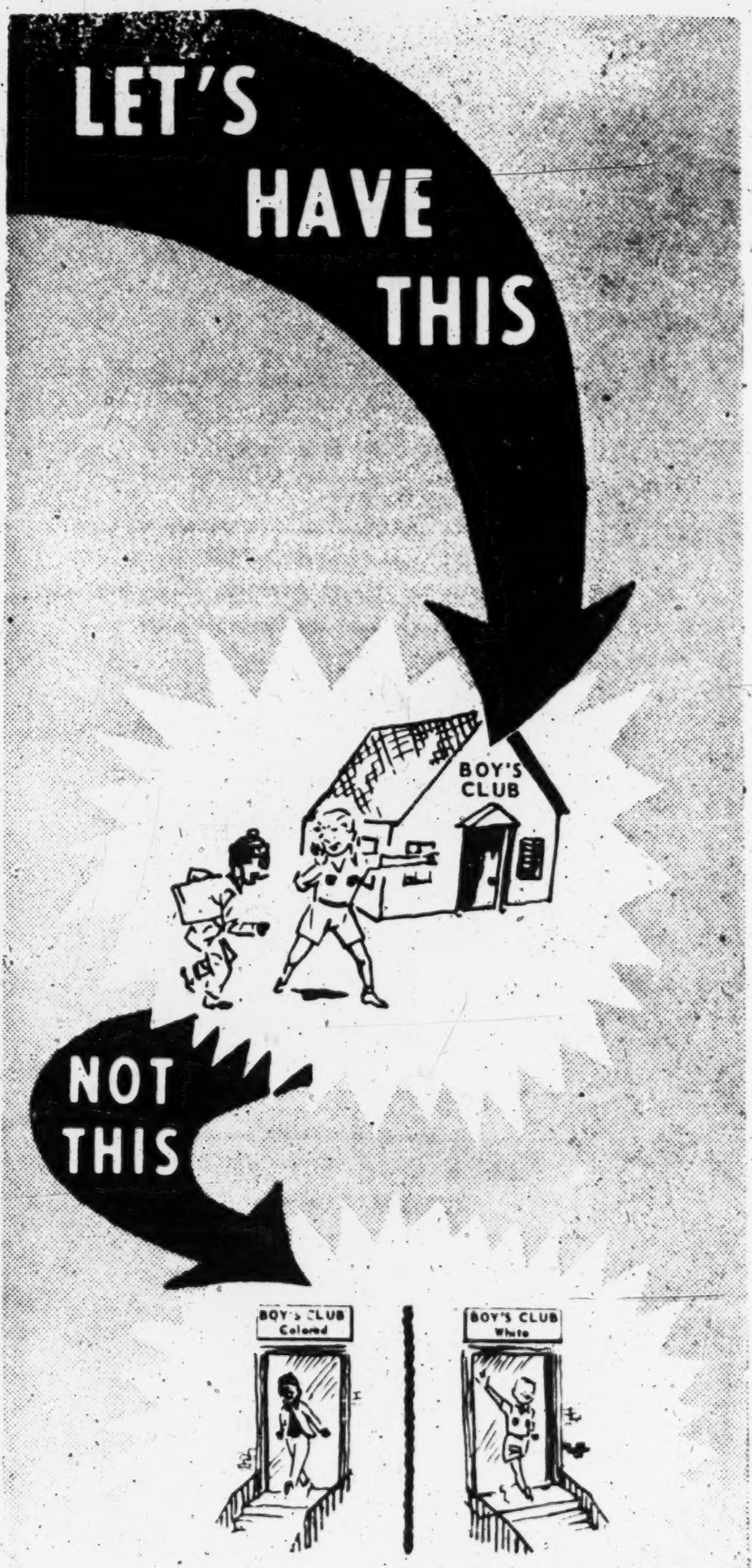
For further information and additional copies contact:

1751 New Hampshire Ave., N.W.

or

AD. 4-6774



Fairfax County Council
On Human Relations

OFFICERS AND DIRECTORS
(As of April 8, 1957)

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Edwin Lynch _____ Burke
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Rev. Milton Sheppard _____ Baileys Crossroads
Elizabeth (Mrs. Sargent) White _____ Ravenwood

P.O. Box 218, Annandale, Virginia

AN INVITATION TO JOIN

The Fairfax County Council On Human Relations

Organized March 4, 1957

Affiliated with the Virginia
Council on Human Relations
and the
Southern Regional Council

The Council draws its membership from Fairfax County and the City of Falls Church. Residents and others having interests in the area are welcome.

No. Carolina Program Similar to One in D. C.

GUILFORD COLLEGE, N. C., Aug. 8 (AP)—An American Friends (Quaker) Service Committee program to aid North Carolina communities seeking "constructive compliance" with the Supreme Court ruling against school segregation was made public today.

B. Tartt Bell, regional executive secretary, made the announcement at the 259th session of the Friends' annual North Carolina meeting here. John W. Alexander, former teacher at the University of North Carolina and Columbia University, will be the director.

Bell said the program will be similar to the committee's work in Washington, D. C. from 1951 to 1955.

Old Ways Gone

Dixie Racial Ties Cut, Parley Told

CHARLOTTESVILLE, Va., Aug. 9 (Spl.)—"Negro leaders in the South say they cannot talk to white people about their problems any more," Irene Osborne, consultant on school integration of the American Friends Service Committee said tonight.

"The old ways of doing business won't work. Old relationships between races no longer exist," she told the Charlottesville-Albermarle Chapter of the Virginia Council of Human Relations.

Miss Osborn, who just finished touring 12 Southern states in the interest of integration, told the members that "we should replace exploitive, humiliating relationships with dignified relationships. We have no right to make arbitrary rules to apply to one group and not to another."

"Segregation itself is invisible and will take time to disappear," she said. "It is better to integrate all at once than by steps and stages, the latter will only prolong problems."

She urged the Council on Human Relations to keep its program flexible so as to meet any emergency that arises.

"The Nation will no longer tolerate segregation in public institutions," she declared.

Mr. E. A. Pritchard, a lawyer in Fairfax, is vice-president of the Virginia Council of Churches.

****

CLEARING HOUSE GOES UNDERGROUND AND RE-APPEARS UNDER A NEW NAME FAIRFAX COUNTY COUNCIL ON HUMAN RELATIONS

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THE STRATEGY AND TACTICS OF COMMUNISTS ARE CONSTANTLY CHANGING AND SHIFTING TO MEET AND OVERCOME NEW PROBLEMS AND CONDITIONS

- F.B.I. CHIEF - J. Edgar Hoover

As you will recall, The Clearing House was set up a little less than two years ago as a medium for exchange of information on activities and experiences in our Northern Virginia community pertinent to compliance with the Supreme Court ruling re segregated schools.

In the first year of its existence, nine issues of The Clearing House were published and widely distributed to key citizens in this area. One issue, in the form of a questionnaire on the Gray Commission proposals, was ordered and used in large quantities by groups in Lynchburg, Danville, Richmond, and Fairfax, while single copies were mailed from headquarters here to many newspapers throughout the state.

After last January, when a majority of voters in the state approved the calling of a Special Constitutional Convention, The Clearing House became inactive because its Steering Committee realized that matters had moved beyond the educational and into the legislative phase.

Now that the General Assembly has passed laws requiring registration of groups interested in integration and race relations, which may apply to The Clearing House, the Steering Committee felt that some definite action should be taken. The Committee was asked to meet on November 19 to discuss what course to take. It was the unanimous decision of those able to attend the meeting that there is little a group like The Clearing House can do until the validity of the various bills passed by the General Assembly can be tested in the courts, as undoubtedly will happen.

The decision, therefore, was to disband and divide the less than forty dollars remaining in the treasury among those few organizations which had contributed as much as ten dollars. These are the Community Council for Social Progress, the Washington Chapter of B'nai B'rith, and the Fairfax Colored Citizens Association. In order to show appreciation for the interest and help of many individuals in Fairfax, a token sum would also be contributed to the Fairfax Council on Human Relations, which is now being formed.

The Steering Committee would like to announce its decision to disband by December 15. Unless we hear from you to the contrary by December 12, we will assume that you agree with this decision, and with the plan for disposing of the small remaining funds.

Jack Orndorff, Chairman

JACK [illegible]F
5209 N[illegible]NG RD.
ARLINGTON, VA.

THIS N.A.A.C.P. APPEAL WAS SENT FROM BOX 218, ANNANDALE, VA.

The NAACP calls upon every freedom-loving American to put into everyday practice both the letter and the spirit of the momentous May 17 decision.

YOU CAN HELP!

Join the NAACP and actively participate in its program for a more democratic America with full citizenship rights for persons of all races.

Obey the laws of our country as interpreted by the United States Supreme Court.

Insist upon the right of all Americans to enjoy full civil rights.

Observe the First Anniversary of the May 17 decision.

N.A.A.C.P.
20 West 40th Street, New York 18, N. Y.
or your local branch

I wish to become a member and

enclose $_____

I enclose $_____ as a Fight from Freedom contribution.

Name _____

Address _____

City and State _____

Annual Membership $2.00, $3.50, $5.00, $10.00 and up. Youth Membership (under 17) $.50; (17-21), $1.00. Life Membership $500. Memberships of $3.50 and up include a year's subscription to the Crisis magazine at $1.50.

May 1955.

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May 1955.

STRANGE BED-FELLOWS APPEAR ON THE LIST BELOW

VOTE AGAINST

the Constitutional Amendment

Monday, January 9

We, the undersigned, strongly urge you to vote against the radical Gray plan to amend the Virginia Constitution next Monday, January 9. • The plan will solve nothing. • It will raise taxes. • It will cause irreparable damage to our school system. We say: Vote it down. Vote AGAINST.

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B

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Mrs. Lucy Madeira Wing
Dr. and Mrs. Rufus Wright
Mr. George Yerby
Mr. and Mrs. Kent Yoke
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Mr. and Mrs. Lehman H. Young
Mrs. H. S. Youngs
Rev. Allen N. Zacher, Jr.
Mrs. Cynthia Zimmerman

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957

No. 51

DAVID H. SCULL,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA EX REL. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

JOSEPH L. RAUH, JR.,
JOHN SILARD,
1631 K Street, N. W.,
Washington 6, D. C.,
KARL SORG,
Radio Building,
Arlington, Virginia,
Attorneys for Petitioner.

INDEX

Table of Cases

Miscellaneous

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, David H. Scull, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia in the case of *Scull* v. *Commonwealth of Virginia ex rel. Committee on Law Reform and Racial Activities.*

Opinions Below

The unreported opinions, judgments and orders of the Supreme Court of Appeals of Virginia and of the Circuit Court of Arlington County are attached hereto as Appendix A, *infra*, p. 19.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia denying petition for writ of error was entered on January 20, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

Questions Presented

In 1956 the Virginia Legislature established the Thomson "Committee on Law Reform and Racial Activities" as part of its program of resistance to school integration. Petitioner was called before the Committee in the course of an investigation described by its Chairman as one to "bust" the NAACP "wide open". Petitioner refused to tell the Committee whether he was a member of the NAACP or other civic and political organizations and for his refusal he was convicted and sentenced. The questions presented are:

1. Was petitioner's freedom of speech and association unlawfully impaired by his conviction for refusing to tell a Committee of the Virginia Legislature investigating racial activities whether he was associated with the NAACP and other civic and political organizations?

2. Were due process and equal protection guarantees violated by petitioner's conviction for refusing to answer questions during the course of an investigation admittedly intended to keep the NAACP, its members, and others "out of litigation" to promote school integration?

3. Was petitioner denied due process by his compelled interrogation before a Virginia legislative committee which

had no rules, no reasonable grounds for calling and questioning him, and no identifiable subject under inquiry at the time of his appearance?

Statute Involved

The statute creating the Committee on Law Reform and Racial Activities is Chapter 37 of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session, 1956, which is set forth as Appendix B, *infra*, p. 23.

Statement

Petitioner has been sentenced to fine and imprisonment for his failure to answer a number of questions before a Committee of the Virginia Legislature investigating "litigation relating to racial activities."[1] Evaluation of petitioner's interrogation and of his refusal to answer requires an examination of the legislative history surrounding the establishment of the Committee and of the circumstances leading to his refusal.

1. *The Legislative History*

Shortly after this Court's 1954 decision in *Brown* v. *Board of Education*, 347 U.S. 483, the Legislature of the State of Virginia undertook a program of massive resistance to school integration.

On August 30, 1954, the Governor appointed a commission to examine the effect of the *Brown* decision. On November 11, 1955, the Commission submitted its final report to the Governor, recommending a special session of the General Assembly and a constitutional convention for the passage of legislation and a constitutional amendment to confer broad discretion upon the Virginia school authori-

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[1] The questions appear in full in Appendix C, *infra*, p. 26.

ties to assign pupils and use state funds for the prevention of integration.

On February 1, 1956, shortly after this report, the General Assembly adopted an "interposition resolution" by a vote of 36-to-2 in the Senate and 90-to-5 in the House of Delegates, stating in part as follows:

> "That by its decision of May 17, 1954, in the school cases, the Supreme Court of the United States placed upon the Constitution an interpretation, having the effect of an amendment thereto, which interpretation Virginia emphatically disapproves; • • •
>
> "That with the Supreme Court's decision aforesaid and this resolution by the General Assembly of Virginia, a question of contested power has arisen: The court asserts, for its part, that the States did, in fact, in 1868, prohibit unto themselves, by means of the Fourteenth Amendment, the power to maintain racially separate public schools, which power certain of the States have exercised daily for more than 80 years; the State of Virginia, for her part, asserts that she has never surrendered such power;
>
> "That this declaration upon the part of the Supreme Court of the United States constitutes a deliberate, palpable, and dangerous attempt by the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States; • • •
>
> "[That Virginia] anxiously concerned at this massive expansion of central authority, • • • is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon her citizens. • • •
>
> "And be it finally resolved, that until the question here asserted by the State of Virginia be settled

by clear Constitutional amendment, we pledge our firm intention to take all appropiate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own most cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States."

On August 27, 1956, the General Assembly was convened by the Governor in an Extra Session to pass anti-integration legislation. The Governor stated in his opening address to the Session:

"The people of Virginia and their elected representatives, are confronted with the gravest problems since 1865. Beginning with the decision of the Supreme Court of the United States on May 17, 1954, there has been a series of events striking at the very fundamentals of constitutional government and creating situations of the utmost concern to all our people in this Commonwealth, and throughout the South.

"Because of the events I have just mentioned, I come before you today for the purpose of submitting recommendations to continue our system of segregated public schools . . ."

"The principal bill which I submit to you at this time defines State policy and governs public school appropriations accordingly . . ."

"Manifestly, integration of the races would make impossible the operation of an efficient system. By this proposed legislation, the General Assembly, properly exercising its authority under the [State] Constitution,

> will clearly define what constitute an efficient system for which State appropriations are made."

In response to this appeal the Assembly enacted a series of bills including a pupil assignment plan,[2] provision for the discontinuance of state funds to integrated schools, and a package of "anti-NAACP bills."

2. *Establishment of the Thomson Committee*

On the same day that it approved the school bills, the Virginia Legislature passed a package of "anti-NAACP bills," appearing as Chapters 31 to 37 of the Acts of the General Assembly, Extra Session 1956,[3] the last of which created the "Committee on Law Reform and Racial Activities", commonly known as the "Thomson Committee" for its sponsor and Chairman, Delegate Thomson. The Act creating the Committee empowered it

> "to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage or promote litigation relating to racial activities in this State."

To that end, the Committee was directed to collect evidence necessary to determine (1) the need "for legislation which would assist in the investigation of such organizations . . . relative to the State income tax laws", (2) the need for legislation "redefining the taxable status" of such organizations and of donations to such organizations, and (3) "the effect which integration or the threat of integration

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[2] The pupil placement law was held unconstitutional. *Atkins* v. *School Board*, 148 F. Supp. 430, *aff'd*, 246 F. 2d 325, *cert. den.* 355 U.S. 855.

[3] These Acts have been respectively codified in the Code of Virginia at §§ 18-349.9 et seq., 18-349.17 et seq., 54-74, 78, 79; 18-349.25 et seq., 18-349.31 et seq., and 30-35 et seq.

could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.'"[4]

3. *Petitioner's Interrogation*

Prior to and after the establishment of his Committee, Chairman Thomson made public statements that its investigations would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (Oct. 15 Tr. 47-49).[5] Shortly after its establishment in September of 1956, the Committee initiated investigations and hearings in various Virginia localities. In its hearings the Committee called "around one hundred" witnesses concerning the NAACP and one witness concerning the "Defenders of State Sovereignty" (Oct. 15 Tr. 31-33).

Petitioner was subpoenaed to appear before the Committee on September 20, 1957, because of unverified allegations appearing in a printed pamphlet entitled "The Shocking

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[4] The "laws of barratry, champerty and maintenance" referred to are included in the six other "anti-NAACP" acts passed with the Thomson Committee measure. These other acts establish in the area of racial activities and racial litigation, registration requirements (Chapters 31 and 32), criminal penalties (Chapters 33, 35, 36) and another investigating committee, the "Boatwright Committee" (Chapter 34). Three of these measures were recently held unconstitutional in a decision by a federal three-judge court in *NAACP* v. *Patty*, 26 Law Week 2370 (D.C.E.D. Va.), decided January 21, 1958.

[5] There are three significant transcripts in the record. The first is the transcript of petitioner's appearance before the Committee on September 20, 1957 and is designated as "Sept. 20 Tr.". The second is the transcript of the October 15, 1957, hearing before the Circuit Court of Arlington County on the show cause order and is designated "Oct. 15 Tr.". The third is the transcript of the October 30, 1957, hearing of the contempt trial and is designated as "Oct. 30 Tr.". In a few places where the context is clear, the letters "Tr." are used without dates.

Truth" emanating from the "Fairfax Citizens Council," an organization about which the committee had no information (Oct. 15 Tr. 20, 23-25, 43-45). The pamphlet (designated in the record as Respondent's Exh. No. 1, Oct. 15, 1957) implies some unspecified relationship between petitioner's Post Office box in Annandale, Virginia, and a number of organizations such as the NAACP, the B'nai B'rith, the American Friends Service Committee, and the Fairfax Federation of PTAs.

At the outset of the Committee hearing on September 20, 1957, petitioner demanded to be informed of the question under inquiry before the Committee, whereupon the Chairman simply rephrased the authorizing resolution in terms even more vague than those of the statute itself.[6] Thereupon petitioner was asked a series of questions relating to his membership in, and the use of his mailbox by, various civic and political organizations, including the Fairfax County Council on Human Relations, the NAACP, the ACLU, the ADA, and the American Friends Service Committee. See Appendix C, *infra*, p. 26. Petitioner refused to answer these questions, as well as questions concerning his involvement in "racial litigation," on the grounds, among others, that they infringed upon his rights under the Federal Constitution. Petitioner's statement refusing to answer these questions on federal constitutional grounds is included as Appendix D to this petition, *infra*, p. 28.

[6] "CHAIRMAN THOMSON: The subjects under inquiry by the Committee, Mr. Scull, are three-fold:

One—several which primarily do not deal with you, but I will nonetheless state all three—the tax-exempt or tax status of both racial organizations in Virginia and the contributions made to such organizations—that is, the taxable status of them.

The integration or threat of integration on the public school system of Virginia, or the general welfare of Virginia.

The third one deals with the violation of certain statutes which are designed to prevent champerty, barratry, and maintenance, or the unauthorized practice of the law" (Sept. 20 Tr. 4).

4. *Enforcement Proceedings*

Following petitioner's refusal to answer and pursuant to the procedure provided by the statute (Appendix B; *infra*, p. 23), petitioner was ordered to show cause before the Circuit Court of Arlington County why he should not be compelled by judicial order to answer the Committee's questions.

i. At the hearing on the show cause order on October 15, 1957, the only witness was Chairman Thomson, who related petitioner's refusals to answer Committee questions. On cross-examination, Mr. Thomson affirmed that he had publicly stated his investigation would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (Tr. 47-49). When asked whether the Committee had investigated any groups other than the NAACP, he stated that it had investigated the "Defenders of State Sovereignty," but conceded that there had been only one witness from that organization as contrasted to "around one hundred" concerning the NAACP (Tr. 31-33).

ii. Chairman Thomson conceded that the Committee had no published rules whatever and the only unpublished rules he could recall concerned the definition of a quorum and a provision for reporting the Committee's proceedings (Tr. 15-16). He affirmed that petitioner had been called because of unverified allegations by the Fairfax Citizens Council (concerning which he had no information) appearing in the pamphlet "The Shocking Truth" (Tr. 20, 23-25, 43-45) and volunteered that, "Of course, I use anonymous telephone calls to begin an investigation with" (Tr. 25). When asked to clarify his statement to petitioner at the hearing concerning the subject under inquiry by the Committee (see *supra*, n. 6, p. 8), Mr. Thomson was reduced to utter

confusion. He was unable to state the subject under inquiry or the need for petitioner's testimony in any terms other than to repeat parts of the authorizing statute, and could make no understandable explanation as to which, if any, parts of the statute were involved in petitioner's questioning nor what he had meant in his statement at the hearing that certain parts of the statute were not involved (Tr. 38-45). He defended the questions addressed to petitioner concerning his civic and political associations on the ground that they would tend to reveal "whether in fact those organizations are racial in character" and would help verify the charges in the pamphlet, "The Shocking Truth" (Tr. 39, 43-45).

iii. Notwithstanding these admissions by Chairman Thomson, the Circuit Court ordered petitioner to appear before the Committee on October 23, 1957, to answer the questions he had previously refused to answer. The Court overruled petitioner's reliance on the *Watkins* and *Sweezy* cases and his contention that the Committee's proceedings violated his rights under the 14th Amendment.[7] See Appendix A, *infra*, pp. 20, 22.

iv. Thereafter petitioner appeared before the Committee on October 23rd and again refused to answer the questions put to him on September 20th.[8] On October 30th petitioner

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[7] Petitioner's constitutional contentions were succinctly stated in his "Motion to Quash Rule to Show Cause" set forth in Appendix D, *infra*, p. 30. See also Oct. 15 Tr. 51-68.

[8] The Circuit Judge, in his order of Oct. 15, 1957, refused a stay pending appeal. In the week between October 15th and October 23rd petitioner unsuccessfully sought a stay of the order of October 15 from the Supreme Court of Appeals of Virginia and from the Chief Justice of this Court, fearing that his failure to employ any available means of review might result in invocation by the courts of Virginia of the doctrine of the *Mine Workers* case, 330 U.S. 258. Having exhausted the only means available for appeal of the order of October 15 prior to October 23rd when he was required to answer, petitioner contended at his contempt trial on October 30 that the *Mine Workers* doctrine was inapplicable. This contention was accepted by the Circuit Judge (see Oct. 30 Tr. 47),

was tried for civil and criminal contempt. At his contempt trial petitioner expressly reasserted all of his earlier contentions under the 14th Amendment (Oct. 30 Tr. 25; see Appendix D, *infra*, p. 28); nevertheless he was found guilty of both civil and criminal contempt and sentenced to serve 10 days in the Arlington County jail and to pay a fine of $50.00 (see Appendix A, *infra*, p. 21). The sentence was stayed pending appeal.

On January 20, 1958, the Supreme Court of Appeals of Virginia refused petitions for writs of error sought by petitioner from the order of October 15, 1957, compelling him to answer the Committee's questions, and from the judgment and order of October 30, 1957, convicting and sentencing petitioner for civil and criminal contempt for disobedience of the order of October 15. See Appendix A, *infra*, p. 19. As concerns the October 15 order to answer, the Supreme Court of Appeals was "of opinion that the said order is plainly right"; the Court likewise found that the October 30th judgment of contempt "is plainly right" and affirmed both rulings. This petition seeks review of the judgment of the Supreme Court of Appeals affirming petitioner's conviction and sentence of October 30, 1957.

Reasons for Granting the Writ

The Decision of The Virginia Supreme Court of Appeals is in Direct Conflict with Recent Decisions of This Court Upholding Constitutional Rights of Witnesses Before Legislative Investigating Committees

The judgment below upholding petitioner's interrogation and conviction contravenes the principles clearly an-

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by counsel for the Committee in opposing petitioner's request for a writ of error, and by the Supreme Court of Appeals of Virginia which affirmed both the order to testify and the contempt conviction on the merits, making no reference to the *Mine Workers* doctrine.

nounced and explicitly applied by recent decisions of this Court in three vital constitutional areas:

1. *First Amendment Intrusion*

This Court's decisions in *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234, following upon the dictum in *United States* v. *Rumely*, 345 U.S. 41, leave no doubt that compelled disclosure before a legislative committee of personal and political associations is an intrusion upon First Amendment rights justifiable only by overriding governmental need. We respectfully submit that the intrusion herein upon protected freedoms is both more severe and less justified by any governmental need than in any similar case yet presented to this Court.

The briefest examination of the 31 questions petitioner refused to answer (see Appendix C, *infra*, p. 26) will demonstrate the direct restraint on First Amendment rights implicit in compelling answers thereto. These questions require petitioner to reveal his relationship to local and national civic and political organizations active in the field of civil rights, as well as to individual members of those organizations, in an atmosphere of bitter hostility and local antagonism to such associations. Under *Watkins* and *Sweezy*, there can be no doubt that such questioning restrains freedom of speech and association protected by the First Amendment.

Even less than in *Watkins* and *Sweezy* is the intrusion in this case justified by any governmental need for the answers sought. The Committee's questioning of petitioner was based on no more than unverified allegations in a pamphlet by an unknown organization which linked petitioner with various civic and political organizations. The only justification that the Committee could offer in the

Circuit Court for addressing such questions to petitioner was that they would enable it to determine "whether in fact those organizations are racial in character" and would help verify the charges of petitioner's connections therewith. Certainly if no more than this is required to order a private citizen under compulsory process to testify concerning his associations, then the First Amendment has ceased to impose any meaningful restraint on governmental action.

Moreover, even more than in *Watkins* and *Sweezy*, the Committee's inquiry was lacking in authorization from the parent body. The Virginia Assembly authorized the Committee to investigate the activities of organizations "which seek to influence, encourage or promote litigation relating to racial activities in this state." That is not an authorization to do what the Committee says it was doing in petitioner's case, determining whether various organizations are "racial in character." Indeed, the unauthorized nature of the inquiry was explicitly conceded by Chairman Thomson, who testified "we were trying to determine through his testimony whether in fact those organizations are racial in character, whether *at a future time* the Legislature might wish to authorize an investigation of those subjects" (Oct. 15 Tr. 39) (emphasis added).

Certainly enough has already been shown to demonstrate the absence of any tangible governmental need for the information demanded from petitioner. But we cannot refrain from pointing out to this Court that the intrusion on First Amendment rights in the instant case is not only unsupported by any tangible need but is affirmatively tainted by a clearly unjustifiable and unlawful investigative effort. The only consistently asserted justification, both in the enactment of the Committee's authorizing resolution and in its activities under that resolution, was the illegal

and unconstitutional purpose of massive resistance to school integration so candidly conceded by the Committee's Chairman. Legislative investigation to achieve results "devastating to the NAACP" which would "bust that organization wide open" by significantly discouraging membership therein under pain and penalty of governmental interrogation and censure, is plainly contrary to the guarantees of the First Amendment. While this purpose might not in and of itself vitiate an otherwise lawful inquiry based on a legitimate governmental need for the information sought, it certainly is the best possible evidence of the absence of any legitimate governmental need for the information sought from petitioner.

If New Hampshire's interest in restraining Communism and subversion did not suffice in the *Sweezy* case,[9] then clearly Virginia's effort to bust the NAACP wide open will not suffice to justify invasion of petitioner's First Amendment liberties.

2. *Restraint upon Equal and Unfettered Access to the Courts for Vindication of the Right to Non-segregated Schooling*

Petitioner's interrogation was part and parcel of Virginia's effort to nullify the right to non-segregated public schooling by restricting access to the courts for the vindication of that right. The legislative history of the enactment of the Thomson Committee's authorization clearly and explicitly reflects the determination of the Assembly, and the Governor who called it into special session, to nullify the right to integrated public schooling by

[9] Certainly the need for the information in the instant case is far less than that asserted by the New Hampshire authorities in *Uphaus* v. *Wyman*, No. 778, October Term, 1957, in which this Court granted certiorari on April 7, 1958. Cf. *Barenblatt* v. *United States*, No. 787, October Term, 1957, in which this Court granted certiorari on April 14, 1958.

harassment of the organization most actively utilizing the courts to vindicate the constitutional right to integrated public schooling. The Committee's questioning of approximately 100 persons connected with the NAACP, while calling but one witness connected with any other organization, is itself a demonstration of how closely Chairman Thomson was able to pursue his public promise that his investigation would be used "to keep the NAACP out of litigation, which is the heart of the organization."

The 14th Amendment assures unfettered and non-discriminatory access to the courts for the redress of grievances and the assertion of constitutional rights. *Truax* v. *Corrigan*, 257 U.S. 312, 334; *Terral* v. *Burke Construction Company*, 257 U.S. 529; *Barbier* v. *Connally*, 113 U.S. 27, 31. Only recently this Court evidenced its concern for equality of access to appellate courts and struck down under the 14th Amendment state action denying such equality. *Griffin* v. *Illinois*, 351 U.S. 12. Denial or restriction of access to the courts is no less state action because it is implemented through legislative investigation. *Cf.*, *Watkins* v. *United States*, at pp. 188, 196-198.

Petitioner is the victim of a crude, albeit candid, effort to deny the NAACP, its members and others, free and equal access to the courts to obtain the rights recently recognized in the *Brown* case. Since the Committee's interrogation of petitioner was an instrumentality for the accomplishment of the illegal and unconstitutional purpose to deny to the NAACP, to its members and to other citizens, equal access to the courts, petitioner's conviction contravenes the 14th Amendment's guarantees of due process and equal protection.[10]

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[10] Petitioner's contention that the purpose of the inquiry was to restrain free and equal access to the courts does not contravene the statement in the *Watkins* opinion (at p. 200) that the solution to the problems there raised "is not to be found in testing the motives of committee members."

3. *Denial of Due Process Before the Committee*

Petitioner was denied those very due process rights which this Court held in *Watkins* and *Sweezy* to be due every witness compelled to testify before a legislative investigating committee.

First, the Committee before which petitioner was summoned to appear lacked the minimal procedural safeguards necessary for fair treatment of witnesses. The Chairman of the Committee conceded at the hearing before the Virginia Circuit Court that the Committee had no published rules whatever and, indeed, had only two unpublished rules—one providing for a quorum and the other for recording the Committee's hearings. Certainly the first requirement of any governmental body that presumes to utilize compulsory process to compel testimony is a body of rules upon which a witness may rely in determining his rights. Compulsory interrogation without rules is inquisition, not due process.

Second, petitioner's interrogation was arbitrary and discriminatory because the Committee had no reasonable basis for calling and questioning him. Petitioner was called because of unverified and irrelevant allegations in a pamphlet emanating from an unknown organization. Apparently this was in conformity with the Committee's regu-

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For, what is relied on here is not covert motives but unsolicited and overt expressions of purpose by the Legislature, the Governor and the Committee. In any case, this Court has not hesitated to strike down, under the equal protection clause, state action whose purpose was found to be racially or otherwise discriminatory. See *Yick Wo* v. *Hopkins*, 118 U.S. 356, 374; *Guinn* v. *United States*, 238 U.S. 347; *Grosjean* v. *American Press Company*, 297 U.S. 233; *Lane* v. *Wilson*, 307 U.S. 268; *Terry* v. *Adams*, 345 U.S. 461. This Court's willingness in equal protection cases to look behind apparently non-discriminatory state action at legislative purpose is compelled by the nature of that constitutional protection itself, for a contrary rule would serve to strip the guarantee of equality of any practical vitality.

lar manner of proceeding, for the Chairman boldly volunteered that he proceeded on the basis of "anonymous telephone calls."

Third, contrary to the due process rule so recently announced in *Watkins*, the Committee failed both at the time of petitioner's appearance and at the Circuit Court hearing on the show cause order, to produce any understandable subject under inquiry to which petitioner's questioning might conceivably be pertinent. The confusing answer made to petitioner on this subject at the hearing (see n. 6, p. 8, *supra*) was compounded by the complete inability of the Committee Chairman to adduce in the Circuit Court any recognizable subject under inquiry (Tr. 38-45). Neither the authorizing statute nor the Committee Chairman's contradictory and inconsistent testimony on this issue provided any rational basis upon which petitioner could determine whether he was legally obligated to answer the Committee's questions.

In sum, the absence of rules guaranteeing a modicum of fairness in the Committee's interrogation of witnesses, the lack of any cause or reason for the interrogation of petitioner, and the absence of any recognizable subject under inquiry to which the questions addressed to petitioner might conceivably have been pertinent, render petitioner's conviction a violation of due process of law.

Conclusion

For the foregoing reasons petitioner's contempt conviction has clearly deprived him of vital constitutional rights in direct conflict with recent decisions of this Court and this petition for writ of certiorari should therefore be granted.

Furthermore, this Court may wish to consider the possibility of summarily reversing the judgment below. The decision of the Virginia Supreme Court of Appeals is so clearly in conflict with recent decisions of this Court that argument of this case might be deemed unnecessarily wasteful of the time of the Court. Petitioner therefore respectfully suggests the possibility of a summary reversal.

Respectfully submitted,

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APPENDIX A

OPINIONS, JUDGMENTS AND ORDERS OF THE SUPREME COURT OF APPEALS OF VIRGINIA AND THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

"VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday *the* 20th *day of* January, 1958.

The petition of David H. Scull for a writ of error to an order entered by the Circuit Court of Arlington County on the 15th day of October, 1957, in a certain proceeding then therein depending, wherein Committee on Law Reform and Racial Activities was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the order aforesaid seen and inspected, the Court being of opinion that the said order is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the order of the said Circuit Court."

* * * * * * *

"VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday *the* 20th *day of* January, 1958.

The petition of David H. Scull for a writ of error to a judgment rendered by the Circuit Court of Arlington County on the 30th day of October, 1957, in a certain proceeding then therein depending, wherein Commonwealth of Virginia, ex rel. Committee on Law Reform and Racial Activities was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said Circuit Court."

* * * * * * *

"VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

On October 15, 1957 there came on for hearing before this Court in the above entitled matter the Motion to Quash Rule to Show Cause filed by respondent David H. Scull. Said motion moved that this Court quash and dismiss the Rule issued upon respondent requiring him to appear and show cause why he should not be required to answer certain questions previously asked him on September 20, 1957 when he was subpoenaed to testify before the Committee on Law Reform and Racial Activities established by Chapter 37 of the Laws of the General Assembly, Extra Session 1956. Thereupon said motion was argued by Counsel for respondent and petitioner, and the Court took evidence and heard arguments under the Rule previously issued.

The Court having considered the evidence and arguments presented by both sides and being of the opinion that the grounds advanced by respondent are without merit and that he is properly required to answer the questions previously addressed to him by said Committee, it is accordingly

ORDERED that the Motion to Quash the Rule to Show Cause served on petitioner on September 20, 1957, be and is hereby denied, and the respondent David H. Scull is ordered at a time and place designated hereinafter to appear before said Committee and answer those questions addressed to respondent which he has previously refused to answer before said Committee on September 20, 1957 at Court Room No. 3, Court House, Alexandria, Virginia, at 10:00 a.m., October 23rd.

Respondent, David H. Scull, having taken exception to the Court's order and having represented that he intends to petition for a writ of error to the foregoing portion of this order, and having requested a stay thereof to permit him to file his petition, it is further

ORDERED that the motion of the respondent requesting this Court to stay its order herein be and it is hereby denied.

Given under my hand this 15th day of October, 1957.

(S.) EMERY N. HOSMER,
Judge of the Circuit Court of the County of Arlington, Virginia".

* * * * * * *

"IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

ORDER

This cause came on to be heard on the 30th day of October, 1957, on the rule to show cause why the Respondent should not be held in contempt of the order of this court dated October 15, 1957, and upon the motion to quash or continue return on said rule, which motion was made on behalf of the Respondent; and the court having heard evidence and arguments upon said motion and upon said rule,

It is hereby ORDERED, ADJUDGED and DECREED that the Respondent's motion to quash or to continue return should be and hereby is denied; that it is the judgment and order of this court that the Respondent be and he hereby is found guilty of civil and criminal contempt of the order of this court of October 15, 1957; and

It is the judgment of this court that the Respondent should be and he hereby is sentenced to serve ten days in the Arlington County jail and to pay a fine of $50.00 and costs, to all of which rulings, orders and judgments the Respondent, by counsel, duly excepted; and

It is further ORDERED that the execution of this judgment and sentence be and it hereby is suspended, conditioned upon the filing of a petition for appeal or writ of error from the Supreme Court of Appeals of Virginia within 60 days from the date of this order; and

It is further ORDERED that the Respondent be admitted to bail in the sum of $500.00 during the suspension of this order; and

It is further ORDERED that the Attorney for the Commonwealth be permitted to enter his appearance as counsel of record for the Petitioner.

Entered this 30th day of October, 1957.

(S.) EMERY N. HOSMER,
Judge.

* * * * * * *

Opinion of Circuit Judge Hosmer Rendered October 15, 1957 (Tr. p. 84-85)

"THE COURT: Gentlemen, it seems to me that this case does not fall squarely within the findings in the *Sweezy* case or in the *Watkins* case. In both of those cases the legislative enactment was very broad indeed. The statute under consideration, it seems to me, points out definitely three areas of inquiry which the committee is authorized to make and they are with respect to determining the need or lack of need for legislation, which would assist in the investigation of such organizations, corporations, associations, relative to the state income tax laws. That is a definite subject of inquiry so far as the authorization to the Committee is concerned.

And concerning the need or lack of need for legislation redefining the taxable status of such corporations, associations, organizations, and other groups as above referred to and further defining the status of donations to such organizations or corporations from a taxation standpoint; and determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.

The situation in this case is different in another aspect. In this case the witness has declined to answer any questions of the Committee based primarily on his contention that the Act of the Legislature is unconstitutional. The attack today is on a broad ground that the authorization of the Legislature should be narrowed in its interpretation

by the Court so that the witness is excluded from testifying. That contention will necessarily have to be rejected. The attack on the broad, constitutional ground is, of course, a very broad approach to the question of constitutionality of this Act in saying that the very purpose of the legislation is such that it renders the Act unconstitutional. The Court likewise rejects that contention.

Consideration of the questions asked by the committee shows that the questions are of a preliminary nature and in developing the inquiry to secure the information which the Committee is after appears to the Court to be perfectly proper line of inquiry.

The Court has concluded that the witness should be required to answer the questions propounded to him by the Committee."

APPENDIX B

Statute Involved

Chapter 37, Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1956

An Act to create a legislative committee of the House and Senate to investigate and hold hearings relative to the activities of corporations, associations, organizations and other groups which encourage and promote litigation relating to racial activities; to provide for the organization, powers and duties of said committee; to provide for hearings; to authorize said committee to issue subpoenas and require testimony; to provide for application to court for an order requiring any person to appear and testify who fails or refuses to do so; to provide for witness fees; to provide for employment of a clerical and investigative force by the committee; to provide for payment of expenses; to appropriate funds for use of the committee; to provide that the Attorney General or other legal counsel shall represent said committee; and for other purposes.

[H 65]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. There is hereby created a Legislative Committee, to be composed of six members of the House appointed by the Speaker thereof, and four members of the Senate appointed by the President thereof.

§ 2. The Committee is authorized to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage or promote litigation relating to racial activities in this State. The Committee shall conduct its investigation so as to collect evidence and information which shall be necessary or useful in

(1) determining the need, or lack of need, for legislation which would assist in the investigation of such organizations, corporations and associations relative to the State income tax laws;

(2) determining the need, or lack of need, for legislation redefining the taxable status of such corporations, associations, organizations and other groups, as above referred to, and further defining the status of donations to such organizations or corporations from a taxation standpoint; and

(3) determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.

§ 3. Said Committee may hold hearings anywhere in the State, and shall have authority to issue subpoenas, which may be served by any sheriff or city sergeant of this State, or any agent or investigator of the Committee, and his return shown thereon, requiring the attendance of witnesses and the production of papers, records and other documents. If any person, firm, corporation, association or organization which fails to appear in response to any such subpoena as therein required, or any person who fails or refuses, without legal cause, to answer any question propounded to him, then upon the application by

the Chairman, or any member of the Committee acting at his direction, to the circuit or corporation court in the county or city wherein such person resides or may be found, such court shall issue an order directing such person to appear and testify. The Committee may, at its option, compel attendance of witnesses or production of documents by motion made before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought. The court upon such motion shall issue such subpoenas, writs, processes or orders as the court deems necessary. The Chairman of the Committee, or anyone acting at his direction, shall be authorized to administer oaths to all witnesses and to issue subpoenas. Every witness appearing pursuant to subpoena shall be entitled to receive, upon request, the same fee as is provided by law for witnesses in the courts of record in the State, and where the attendance of witnesses, residing outside the county or city wherein the hearing is held is required, they shall be entitled to receive the sum of seven dollars after so appearing, upon certification thereof by the Chairman to the State Comptroller.

§ 4. Each member of the Committee shall receive, in addition to actual travel expenses, the same per diem as received by members of other legislative committees, while engaged in official duties as a member of said Committee.

§ 5. Said Committee shall be authorized to employ a clerical force and such investigators and other personnel as it may deem necessary to carry out the provisions of this act, and may expend moneys for the procuring of information from other sources.

§ 6. The Attorney General shall assist the Committee upon request, and the Committee may engage such other legal counsel as it shall deem necessary.

§ 7. The Committee shall complete its investigations and make its report, together with any recommendations as to legislation, to the Governor and the General Assembly not later than November one, nineteen hundred fifty-seven.

2. There is hereby appropriated from the general fund of the State treasury the sum of twenty-five thousand dollars to carry out the purposes of this act.

APPENDIX C

QUESTIONS ADDRESSED TO PETITIONER BY THE THOMSON COMMITTEE ON SEPTEMBER 20 WHICH HE HAS REFUSED TO ANSWER

(1) "Are you a member of The Fairfax County Council on Human Relations?"

(2) "Are you a member of the National Association for the Advancement of Colored People?"

(3) "Have you contributed to any of the suits, contributed financially to any of the suits designed to bring about racial integration in the public schools?"

(4) "Have you paid court costs in any of the suits designed to bring about racial integration in the State of Virginia?"

(5) "Have you paid attorneys' fees to any attorneys in regard to racial litigation involved in the integration of the public schools in Virginia?"

(6) "Have you attended any meetings at which the formulation of suits against the State of Virginia in racial integration suits in the public schools have been discussed?"

(7) "I notice in your statement that you say that you think you have a moral duty to counsel with a fellow citizen as to his legal rights if he is ignorant of them. Do you feel qualified to counsel with him as to his legal rights?"

(8) "Who else uses that box number [No. 218 in Annandale, Va.] besides yourself?"

(9) "Does the Fairfax County Council on Human Relations use that box?"

(10) "Has the NAACP used that number from time to time?"

(11) "Has the organization know as the Citizens Clearing House used that box number?"

(12) "Has the Fairfax County Federation of PTA's used that number?"

(13) "Has the Fairfax County Federation of P-TA Workshops on Supreme Court Decisions on the Public Schools used that box number?"

(14) "Has Miss Caroline H. Planck or Mrs. Barbara Marx used that box number?"

(15) "Do you know Mrs. Planck or Mrs. Marx?"

(16) "Has Dr. E. B. Henderson used that box number?"

(17) "Has the National Conference of Christians and Jews used that box number?"

(18) "Has the Save Our Schools Committee of Fairfax County used that box number?"

(19) "Has Mr. Warren D. Quenstedt used that box?"

(20) "Has Mr. E. A. Prichard used that number?"

(21) "Has the American Civil Liberties Union used that same box number?"

(22) "Has the Americans For Democratic Action, known as ADA, used that box number?"

(23) "Has the Japanese-American Citizens League used that box number?"

(24) "Has the Washington Inter-Racial Workshop used that same number?"

(25) "Has the American Friends Service Committee used that box number?"

(26) "Does the Community Council for Social Progress use the same box number?"

(27) "Does B'nai Brith use that same box number?"

(28) "Does the Communist Party use that box number?"

(29) "Do you belong to any racial organization, and by 'racial' I mean organizations whose membership is inter-racial in character or organizations that are instituting or fostering racial litigation?"

(30) "Have you ever been called as a witness before any Congressional Committee?"

(31) "Has your name ever been cited by any Congressional Committee as being on any list of members of any organizations that are cited as subversive?"

APPENDIX D

Preservation of the Federal Question

Statement by Petitioner in Refusing to Answer Before the Committee on Law Reform and Racial Activities on September 20, 1957

"Mr. Chairman:

"On September 29, 1956, the General Assembly of Virginia passed seven bills designed, broadly speaking, to restrict the free access to the courts of citizens who need to establish or maintain their civil rights. I believe that all of this legislation is unconstitutional and contrary to our heritage of common law, and that consequently this Committee, created by one of those bills as part of a whole legislative program, is without proper jurisdiction to pursue its inquiry.

"I believe that it is not only my civil right but also under some circumstances my moral duty to counsel with a fellow-citizen as to his legal rights if he is ignorant of them, to offer him my support if he is fearful of asserting his rights, and to assist him financially if he is too poor to take the legal steps necessary to establish his rights. It should, of course, be the duty of the executive and of the legislature to see that the rights of all citizens are protected. But when to the lasting dishonor of Virginia our Governor and our General Assembly have done everything possible to discourage our humblest citizens from enjoying their rights, it becomes especially the duty of the conscientious person to see to it that justice is done to the ignorant, the friendless, and the poor. I make no claim here to have done anything extraordinary in this way, but I believe that no agency of the government has the right to question or to interfere with any citizen in the exercise of such a civic role. If such intimidation were sanctioned, then no unpopular cause or helpless

minority could be assured of free access to the courts as a protection against tyranny. A disinterested concern for justice for the person from whom there is no possible claim of blood or opportunity of reward has through the ages been extolled as one of the noblest virtues, and a cornerstone of our system of laws. Such a disinterested act is made illegal by the legislation passed last year. I am proud to have protested this action in Richmond before it became law; I challenge it now.

"Consequently, I shall decline to answer any question on this subject put by the present committee unless and until the constitutional validity of its inquiry and the related legislation has been upheld by proper judicial process.

"I believe that furthermore any right which I may exercise personally and individually I may also exercise jointly with other citizens through a voluntary organization or through voluntary contributions, and that the state has no general right to invade the privacy of such voluntary association in order to accomplish unconstitutional objectives. I shall, therefore, equally decline to answer questions put by this committee on this subject, although as in the case of individual activities I shall willingly answer such questions as the highest court to which the matter may be referred shall decide are proper. I fullly recognize the public right to know the officers, directors, and general purposes of every organization which sets itself before the public in any way, but since this is a matter of public information for every organization to which I belong or contribute, I have nothing to add to what the committee can obtain directly from the organization in which it may have an interest.

"The subpoena served upon me goes beyond this Committee's power under its enabling act. I am not properly informed of the subject of inquiry. The question you ask me is beyond your jurisdiction.

"For all of the foregoing reasons, and on the basis of all the rights accorded me under Sections 8, 11, and 12 of the Constitution of the Commonwealth of Virginia and

the correlative provisions of the Federal Constitution, I respectfully decline to answer that question."

* * * * * * *

Motion to Quash Rule to Show Cause Filed in the Circuit Court of the County of Arlington, October 15, 1957

"... The demand made upon Movant to answer said questions is in violation of his rights under the Due Process and Equal Protection guarantees of the Fourteenth Amendment to the United States Constitution in the following respects and particulars:

(a) The Thomson Committee was established and given investigative authority, as part of a legislative program of "massive resistance" to the United States Constitution and the Supreme Court's desegregation decisions, in order to harass, vilify, and publicly embarrass members of the NAACP and others who are attempting to secure integrated public schooling in Virginia.

(b) The purpose and effect of the inquiries of the Thomson Committee, including those addressed to the Movant, is denial of access to the courts for vindication of Constitutional rights, by harassment and exposure of school integration plaintiffs and members of the organization which is most actively engaged in litigating the integration suits.

(c) The inquiries addressed to Movant violate his rights of free speech, assembly, and petition because they repress freedom of expression and constitute an unjustified intrusion into and restraint upon his association with others in legal and laudable political and humanitarian causes.

(d) The demand for answers made upon Movant by the Thomson Committee is arbitrary and unreasonable inasmuch as there is no justification for the special and selective investigatory authority granted to the Thomson Committee, and nothing in that authority renders pertinent the demand made upon Movant to disclose his civic and political associations and activities.

(e) The Thomson Committee's authorizing resolution is

too vague and imprecise to justify compelled testimonial disclosures.

(f) The Committee failed, despite proper inquiry made by Movant, to inform him in what respect its questions were pertinent to the subject under inquiry by the Committee.

(g) The information sought from Movant was neither intended to, nor could reasonably be expected to, assist the Legislature in any proper legislative function."

(9947-3)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 51

DAVID H. SCULL,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA EX REL. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

BRIEF FOR PETITIONER

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CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

MISCELLANEOUS

IN THE

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Opinions Below

The opinions, judgments and orders of the Supreme Court of Appeals of Virginia and the Circuit Court of the County of Arlington in this case are unreported; they appear at R. 57-58, 86-87, 100-101, 107-108, 111-112.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia denying a petition for writ of error was entered on January 20, 1958. Certiorari was granted by this Court on June 9, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

Question Presented

In 1956 the Virginia Legislature established the Thomson "Committee on Law Reform and Racial Activities" as part of its program of resistance to school integration. Petitioner was called before the Committee in the course of an investigation described by its Chairman as one to "bust" the NAACP "wide open". Petitioner refused to answer the Committee's questions asking him to reveal his association with the NAACP and various civic, political and religious organizations, for which refusal he was convicted of contempt and sentenced to imprisonment.

The question presented is whether the compelled interrogation of petitioner before a Virginia "racial activities" investigating committee, concerning his association with the NAACP and other civic, political and religious organizations, deprived petitioner of constitutionally-protected liberties.

Constitutional Provisions and Statute Involved

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution provides in part:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Chapter 37 of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1956, establishing the Committee on Law Reform and Racial Activities, provided:

An Act to create a legislative committee of the House and Senate to investigate and hold hearings relative to the activities of corporations, associations, organizations and other groups which encourage and promote litigation relating to racial activities; to provide for the organization, powers and duties of said committee; to provide for hearings; to authorize said committee to issue subpoenas and require testimony; to provide for application to court for an order requiring any person to appear and testify who fails or refuses to do so; to provide for witness fees; to provide for employment of a clerical and investigative force by the committee; to provide for payment of expenses; to appropriate funds for use of the committee; to provide that the Attorney General or other legal counsel shall represent said committee; and for other purposes.

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. There is hereby created a Legislative Committee, to be composed of six members of the House appointed by the Speaker thereof, and four members of the Senate appointed by the President thereof.

§ 2. The Committee is authorized to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage, or promote litigation relating to racial activities in this State. The Committee shall conduct its investigation so as to collect evidence and information which shall be necessary or useful in

(1) determining the need, or lack of need, for legislation which would assist in the investigation of such organizations, corporations and associations relative to the State income tax laws;

(2) determining the need, or lack of need, for legislation redefining the taxable status of such corporations, associations, organizations and other groups, as above referred to, and further defining the status of donations to such organizations or corporations from a taxation standpoint; and

(3) determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.

§ 3. Said Committee may hold hearings anywhere in the State, and shall have authority to issue subpoenas, which may be served by any sheriff or city sergeant of this State, or any agent or investigator of the Committee, and his return shown thereon, requiring the attendance

of witnesses and the production of papers, records and other documents. If any person, firm, corporation, association or organization which fails to appear in response to any such subpoena as therein required, or any person who fails or refuses, without legal cause, to answer any question propounded to him, then upon the application by the Chairman, or any member of the Committee acting at his direction, to the circuit or corporation court in the county or city wherein such person resides or may be found, such court shall issue an order directing such person to appear and testify. The Committee may, at its option, compel attendance of witnesses or production of documents by motion made before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought. The court upon such motion shall issue such subpoenas, writs, processes or orders as the court deems necessary. The Chairman of the Committee, or anyone acting at his direction, shall be authorized to administer oaths to all witnesses and to issue subpoenas. Every witness appearing pursuant to subpoena shall be entitled to receive, upon request, the same fee as is provided by law for witnesses in the courts of record in the State, and where the attendance of witnesses residing outside the county or city wherein the hearing is held is required, they shall be entitled to receive the sum of seven dollars after so appearing, upon certification thereof by the Chairman to the State Comptroller.

§ 4. Each member of the Committee shall receive, in addition to actual travel expenses, the same per diem as received by members of other legislative committees, while engaged in official duties as a member of said Committee.

§ 5. Said Committee shall be authorized to employ a clerical force and such investigators and other personnel as it may deem necessary to carry out the provisions of

this act, and may expend moneys for the procuring of information from other sources.

§ 6. The Attorney General shall assist the Committee upon request, and the Committee may engage such other legal counsel as it shall deem necessary.

§ 7. The Committee shall complete its investigations and make its report, together with any recommendations as to legislation, to the Governor and the General Assembly not later than November one, nineteen hundred fifty-seven.

2. There is hereby appropriated from the general fund of the State treasury the sum of twenty-five thousand dollars to carry out the purposes of this act.

Statement

Petitioner has been sentenced to fine and imprisonment for his failure to answer thirty-one questions [1] before a Committee of the Virginia Legislature investigating organizations seeking "to influence, encourage or promote litigation relating to racial activities." Evaluation of petitioner's refusal to answer requires examination of the legislative history surrounding the establishment of the Committee, as well as the nature and circumstances of his interrogation:

1. *The Legislative Background*

Shortly after this Court's 1954 decision in *Brown* v. *Board of Education*, 347 U.S. 483, Virginia undertook a program of "massive resistance" to school integration. On August 30, 1954, the Governor appointed a commission to examine the effect of the *Brown* decision. On November 11, 1955, the commission submitted its final report to the

[1] These questions appear as *Appendix A, infra*, p. 39.

Governor, recommending a special session of the General Assembly and a constitutional convention, for the passage of legislation and a constitutional amendment conferring broad discretion upon Virginia school authorities to assign pupils and use state funds for the prevention of integration.

On February 1, 1956, shortly after this report, the General Assembly adopted an "interposition resolution", stating in part as follows:

> "That by its decision of May 17, 1954, in the school cases, the Supreme Court of the United States placed upon the Constitution an interpretation, having the effect of an amendment thereto, which interpretation Virginia emphatically disapproves; * * *
>
> "That with the Supreme Court's decision aforesaid and this resolution by the General Assembly of Virginia, a question of contested power has arisen: The court asserts, for its part, that the States did, in fact, in 1868, prohibit unto themselves, by means of the Fourteenth Amendment, the power to maintain racially separate public schools, which power certain of the States have exercised daily for more than 80 years; the State of Virginia, for her part, asserts that she has never surrendered such power;
>
> "That this declaration upon the part of the Supreme Court of the United States constitutes a deliberate, palpable, and dangerous attempt by the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States; * * *
>
> "[That Virginia] anxiously concerned at this massive expansion of central authority, * * * is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon her citizens. * * *

"And be it finally resolved, that until the question here asserted by the State of Virginia be settled by clear Constitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own most cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States."

On August 27, 1956, the General Assembly was convened by the Governor in an Extra Session to pass anti-integration legislation. The Governor stated in his opening address to the Session:

"The people of Virginia and their elected representatives, are confronted with the gravest problems since 1865. Beginning with the decision of the Supreme Court of the United States on May 17, 1954, there has been a series of events striking at the very fundamentals of constitutional government and creating situations of the utmost concern to all our people in this Commonwealth, and throughout the South.

"Because of the events I have just mentioned, *I come before you today for the purpose of submitting recommendations to continue our system of segregated public schools . . .*" (emphasis supplied).

"The principal bill which I submit to you at this time defines State policy and governs public school appropriations accordingly . . ."

"Manifestly, integration of the races would make impossible the operation of an efficient system. By this

> proposed legislation, the General Assembly, properly exercising its authority under the [Virginia] Constitution, will clearly define what constitutes an efficient system for which State appropriations are made."

In response to this appeal the Assembly enacted a series of bills, including a pupil assignment plan,[2] provisions for the discontinuance of state funds to integrated schools, and, as part of a package of "anti-NAACP bills",[3] the law establishing the investigating committee before which petitioner was called.

2. *Establishment of the Thomson Committee*

On the same day that it approved the school bills, the Assembly passed a package of "anti-NAACP bills," the last of which created the "Committee on Law Reform and Racial Activities" commonly known as the "Thomson Committee" for its sponsor and Chairman, Delegate Thomson. The Act creating the Committee empowered it

> "to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage or promote litigation relating to racial activities in this State."

To that end, the Committee was directed to collect evidence necessary to determine (1) the need "for legislation which

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[2] The pupil placement law was held unconstitutional. *Atkins* v. *School Board*, 148 F. Supp. 430, *aff'd*, 246 F. 2d 325, *cert. den.*, 355 U.S. 855.

[3] Chapters 31 to 37 of the Acts of the General Assembly, Extra Session 1956, Code of Virginia §§ 18–349.9 *et seq.*, 18–349.17 *et seq.*, 54–74, *et seq.*, 18–349.25 *et seq.*, 18–349.31 *et seq.*, and 30–35 *et seq.* They establish in the area of racial activities and racial litigation, registration requirements (Chapters 31 and 32), criminal penalties (Chapters 33, 35, 36) and another investigating committee, the "Boatwright Committee" (Chapter 34). Three of these measures were held unconstitutional in a decision of a three-judge court in *NAACP* v. *Patty*, 159 F. Supp. 503, Statement of Jurisdiction pending, No. 127, October Term, 1958.

would assist in the investigation of such organizations . . . relative to the State income tax laws", (2) the need for legislation "redefining the taxable status" of such organizations and of donations to such organizations, and (3) "the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith." Chairman Thomson subsequently testified that, to the best of his knowledge, "this is the first legislative investigating committee operating outside of the regular session or a session of the Legislature ever created in Virginia" (R. 28).

Mr. Thomson is, by his own statement, "the leading supporter of segregated schools in Northern Virginia" (R. 36), at least among elected officials. Both prior to and after the establishment of his Committee, Chairman Thomson made public statements that its investigations would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (R. 34-36). Shortly after its establishment in September of 1956, the Committee initiated investigations and hearings in various Virginia localities. In its hearings the Committee called "around one hundred" witnesses concerning the NAACP and only one other witness, whose testimony concerned the "Defenders of State Sovereignty" (R. 23-25).

3. *Petitioner's Interrogation*

On September 19 and 20, 1957, the Committee held hearings in Arlington, Virginia. Petitioner and a number of other persons were interrogated pursuant to subpoena and "in every regard they were questioned on some phase of racial integration" (R. 17). Petitioner was subpoenaed

to appear before the Committee on September 20, 1957, because of unverified allegations appearing in a printed pamphlet entitled "The Shocking Truth" (R. 84) emanating from the "Fairfax Citizens' Council," an organization about which the Committee had no information (R. 19-20, 32-33). The pamphlet alleges a relationship between petitioner's Post Office box in Annandale, Virginia, and a number of organizations such as the NAACP, the B'nai B'rith, the American Friends Service Committee, and the Fairfax Federation of PTAs.

At the outset of the Committee hearing, petitioner requested to be informed of the "question under inquiry", whereupon the Chairman simply rephrased the authorizing language in terms even more vague than those of the statute itself.[4] Thereupon petitioner was asked a series of questions relating to his membership in, and the use of his mailbox by, various civic, political and religious organizations, including the Fairfax County Council on Human Relations, the NAACP, the American Civil Liberties Union, the Americans for Democratic Action, the American Friends Service Committee, the National Conference of Christians and Jews, the B'nai B'rith and like organizations (R. 76-82; *Appendix A, infra*, p. 39). He was asked to reveal whether his mailbox had been "used" by Miss Caroline H. Planck or Mrs. Barbara Marx, persons active in Arlington race relations work; Dr. E. B.

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[4] "CHAIRMAN THOMSON: The subjects under inquiry by the Committee, Mr. Scull, are three-fold:

One—several which primarily do not deal with you, but I will nonetheless state all three—the tax-exempt or tax status of both racial organizations in Virginia and the contributions made to such organizations—that is, the taxable status of them.

The integration or threat of integration on the public school system of Virginia, or the general welfare of Virginia.

The third one deals with the violation of certain statutes which are designed to prevent champerty, barratry, and maintenance, or the unauthorized practice of the law" (R. 73).

Henderson, leader of the Virginia NAACP; Mr. Warren D. Quenstedt, Democratic Candidate for Congress in the 1956 election; and Mr. E. A. Prichard, Fairfax attorney and Vice President of the Virginia Council of Churches. Petitioner refused to answer all these questions, as well as questions concerning involvement in "racial litigation," on the grounds, among others, that they infringed upon his rights under the Federal Constitution (R. 74-75).

4. *Enforcement Proceedings*

Following petitioner's refusal to answer and pursuant to the procedure provided by the Virginia statute, petitioner was ordered to show cause before the Circuit Court of Arlington County why he should not be compelled by judicial order to answer the Committee's questions.

i. At the hearing on the show cause order on October 15, 1957, the only witness was Chairman Thomson, who related petitioner's refusals to answer Committee questions. On cross-examination, Mr. Thomson affirmed that he had publicly stated his investigation would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (R. 34-36). When asked whether the Committee had investigated any groups other than the NAACP, he stated that it had investigated the "Defenders of State Sovereignty," but conceded that there had been "only one" witness from that organization as contrasted to "around one hundred" concerning the NAACP (R. 25).

ii. Chairman Thomson conceded that the Committee had no published rules whatever and the only unpublished rules he could recall concerned the definition of a quorum and a provision for reporting the Committee's proceedings (R. 14). He affirmed that petitioner had been called because

of unverified allegations by the Fairfax Citizens' Council (concerning which he had no information) appearing in the pamphlet "The Shocking Truth" (R. 19-20, 32-33) and justified this action by volunteering that he even used "anonymous telephone calls to begin an investigation with" (R. 20). He defended the questions addressed to petitioner concerning his civic, political and religious associations on the ground that they would tend to reveal "whether in fact those organizations are racial in character" and would help verify the charges in the pamphlet, "The Shocking Truth" (R. 12, 29, 32-33).

iii. When asked to clarify his statement to petitioner at the hearing concerning the subject under inquiry by the Committee (see *supra*, n. 4, p. 11), Mr. Thomson was unable to state the subject under inquiry or the need for petitioner's testimony in any terms other than to repeat parts of the authorizing statute; he could make no understandable explanation as to which subjects of investigation under the statute were involved in petitioner's questioning nor what he had meant by his statement at the hearing that "several" of the subjects were not involved. The three subjects of investigation authorized under the statute are (1) tax exempt status, (2) threat of integration and (3) violation of the champerty, barratry and maintenance laws. When asked which of these three subjects were involved in petitioner's interrogation, Chairman Thomson variously stated (R. 29-30): that the questioning had not been related to the first, had been related to the second and *not* to the third (R. 29, l. 37-R. 30, l. 4); then he implied that it *had* been related to the third (R. 30, l. 5-6); then he stated it had *not* been related to the third (R. 30, l. 29-37); and finally he stated that it *had* been related *only* to the third (R. 30, l. 38-41).

iv. Notwithstanding these admissions by Chairman Thomson, the Circuit Court ordered petitioner to appear

before the Committee on October 23, 1957,[5] to answer the questions he had previously refused to answer (R. 57-58, 86-87). The Court overruled petitioner's reliance on *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234, and his contention that the Committee's proceedings violated his rights under the First and Fourteenth Amendments.[6]

v. Thereafter petitioner appeared before the Committee on October 23rd and again refused to answer the questions previously put to him on September 20th. On October 30th petitioner was tried for civil and criminal contempt. At his contempt trial petitioner expressly reasserted all of his earlier constitutional contentions; nevertheless he was found guilty of both civil and criminal contempt and sentenced to serve 10 days in the Arlington County jail

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[5] The Circuit Judge, in his order of Oct. 15, 1957, refused a stay pending appeal. In the week between October 15th and October 23rd petitioner unsuccessfully sought a stay of the order of October 15 from the Supreme Court of Appeals of Virginia and from the Chief Justice of this Court, fearing that his failure to employ any available means of review might result in invocation by the courts of Virginia of the doctrine of the *Mine Workers* case, 330 U.S. 258. Having exhausted the only means available for appeal of the order of October 15 prior to October 23rd, when he was required to answer, petitioner contended at his contempt trial that the *Mine Workers* doctrine was inapplicable. This contention was accepted by the Circuit Judge (R. 63, 66, 100), by counsel for the Committee in opposing petitioner's request for a writ of error, and by the Supreme Court of Appeals of Virginia which affirmed both the order to testify and the contempt conviction on the merits, making no reference to the *Mine Workers* doctrine (R. 111-112).

[6] Petitioner's constitutional contentions were succinctly stated before the Committee on September 20, 1957 (R. 74-75); in the motion to quash (R. 3-5) and the oral argument in the Arlington Circuit Court on October 15, 1957 (R. 37-48); in the Notice of Appeal and Assignments of Error from the order of October 15 (R. 87-89); in the motion to quash filed on October 29 in the Arlington Circuit Court (R. 90-91); before the Arlington Circuit Court at the trial for contempt on October 30; in the Notice of Appeal and Assignments of Error from the judgment of October 30 (R. 108-111); and before the Supreme Court of Appeals of Virginia in the Petitions for Writs of Error.

and to pay a fine of $50.00 (R. 107). The sentence was stayed pending appeal (R. 100-101).

vi. On January 20, 1958, the Supreme Court of Appeals of Virginia refused petitions for writs of error sought by petitioner from the order of October 15, 1957, compelling him to answer the Committee's questions, and from the judgment and order of October 30, 1957, convicting and sentencing petitioner for civil and criminal contempt for disobedience of the order of October 15 (R. 111-112). As concerns the order to answer, the Supreme Court of Appeals was "of opinion that the said order is plainly right"; the Court likewise found that the judgment of contempt "is plainly right" and affirmed both rulings.

On the ground that his interrogation violated constitutional liberties, petitioner seeks reversal of the judgment of the Supreme Court of Appeals affirming his conviction and sentence.

Summary of Argument

I

First Amendment limitations apply with full vigor to legislative investigation. Prior decisions of this Court foreshadowed its declaration in *United States* v. *Rumely*, 345 U.S. 41, that legislatively compelled testimonial disclosures present weighty First Amendment issues. Any lingering doubts after *Rumely* were put to rest by *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234. In *Watkins* the Court stated unequivocally that legislative investigation "is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly." And in *Sweezy* this Court held the First Amendment's guarantees equally applicable to state legislative inquiry. Finally, the unanimous ruling of this Court in *NAACP* v. *Alabama*, 357 U.S. 449, can leave

no doubt whatever that freedom and privacy of civic, political and religious association is protected from unwarranted intrusion by governmental inquiry.

II

The Committee made unprecedented massive intrusion upon petitioner's First Amendment freedoms. It demanded that petitioner reveal his relationship to local and national organizations active in the field of civil rights, and to individual members thereof, in an atmosphere of bitter local hostility and antagonism to such associations. Indeed, petitioner was ordered not only to disclose NAACP affiliation but also association with a substantial number of civic and political groups representing widely diversified interests and membership. And the Committee intruded even upon petitioner's freedom of religious association by its questions concerning the B'nai B'rith, the National Conference of Christians and Jews and the American Friends Service Committee.

It is immaterial that most of the organizations about which petitioner was questioned are held in high public esteem by responsible persons in Virginia and elsewhere. Persons may be dissuaded from joining the most laudable causes if membership may be followed by subpoena, for one compelled to appear before an apparently hostile governmental authority is subject to the idle curiosity of the general public, the suspicion of many credulous persons and the hatred and hostility of the bigoted minority.

III

The Committee's intrusion upon petitioner's cherished liberties was completely unwarranted and unjustified. The only justification the Committee could offer for its questions to petitioner was that they would enable it to determine

whether the organizations in question are "racial in character" and would help to verify the charge of petitioner's connection therewith. Certainly something more than this is required before the state may compel a citizen to reveal his civic, political and religious associations.

Indeed, petitioner's questioning was so utterly lacking in legislative need or governmental justification that the Committee could not even state the subject under inquiry to which the questioning was supposed to relate. The testimony of the Committee Chairman rules out any subject of inquiry at the time of petitioner's appearance other than "integration or threat of integration on the public school system of Virginia." If this manifestation of "massive resistance" can properly be a subject of Virginia's inquiry at all, which we doubt, nevertheless the Committee's effort to determine whether organizations such as the NAACP, the National Conference of Christians and Jews and the Washington Inter-Racial Workshop were interracial in character simply cannot be related to this supposed subject of Virginia's concern. In sum, the Committee has been unable to demonstrate a legislative justification of any kind for its intrusion upon petitioner's freedom of association.

IV

Petitioner's interrogation was not only unjustified but tainted by unlawful purpose. Since the Committee's interrogation of petitioner was but an instrumentality for the accomplishment of the unconstitutional purpose of denying free and equal access to the courts to accomplish school desegregation, petitioner's conviction contravenes the constitutional guarantee of equal protection. Moreover, petitioner's interrogation cannot, contrary to the guarantees of the First Amendment, be validated by the only announced purpose of the Committee, to achieve results "devastating

to the NAACP," which would "bust that organization wide open" by discouraging membership under pain and penalty of governmental interrogation and censure.

The legislative history of the enactment of the Thomson Committee is replete with governmental declarations of unlawful purpose, to wit, nullification of the right to desegregated public schooling in Virginia. The Committee's activities, virtually limited to investigation of the NAACP, demonstrate the perseverance of Chairman Thomson in implementing his public promise that the Committee's investigation would be used "to keep the NAACP out of litigation, which is the heart of the organization."

Unfortunately Chairman Thomson's excesses are not an isolated departure from civilized standards of legislative conduct but merely representative of the use of legislative investigation as an anti-integration device in the states which are "massively resisting" desegregation. Legislative investigations as an anti-integration device have been widely employed or threatened in Alabama, Georgia, Florida, Louisiana, Mississippi, South Carolina and Virginia. These investigations, authorized and undertaken since this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, are sometimes thinly veiled but more often publicly acknowleged governmental efforts at harassment, intimidation and punishment of those who, by litigation, organization, or persuasion, support school integration and equality for Negroes. This Court's integration mandate cannot thus be "nullified indirectly." *Cooper* v. *Aaron*, No. 1, August Special Term, 1958.

V

The anti-integration investigating committees are rarely concerned with activity potentially the subject of legislation—their "investigations" amount to little more than

the demand for the names and associations of individuals dedicated to improved race relations and civil rights. Thus, the primary effort of the Thomson Committee was to obtain the names of NAACP members and others who support integration; none of the questions addressed to petitioner concerned his activities—the greatest number were demands for the identification of others or petitioner's association with organizations and their association with the petitioner.

Diligent speculation fails to reveal any grounds upon which states could support compulsory interrogation such as that to which petitioner was subjected; no more by investigation than by lawmaking may legislatures go beyond the permissible area of reprehensible group activity into the forbidden area of individual association itself. In any event, no justification is presented in petitioner's case for the Committee's deliberate massive intrusion upon his freedom and privacy of association with others in promoting race relations and civil rights in Virginia.

ARGUMENT

COMPELLED INTERROGATION OF PETITIONER BEFORE AN INVESTIGATING COMMITTEE OF THE VIRGINIA LEGISLATURE, CONCERNING HIS ASSOCIATION WITH THE NAACP AND OTHER CIVIC, POLITICAL AND RELIGIOUS ORGANIZATIONS, DEPRIVED PETITIONER OF CONSTITUTIONALLY-PROTECTED LIBERTIES.

I. First Amendment Limitations Apply with Full Vigor to Legislative Investigation.

Even before this Court's recent decisions explicitly affirming First Amendment limitations upon legislative inquiry, it was manifest that such inquiry is subject to the constitutional prohibition against impair-

ment of freedom of religion, speech, press and assembly. For the First Amendment does not merely preclude governmental prohibition of the exercise of freedoms of belief, expression and association; it equally precludes "indirect discouragements"[7] flowing from restrictive governmental action of various kinds, including those derived from governmentally-compelled disclosures.[8]

The decisions of this Court before *United States* v. *Rumely*, 345 U.S. 41, clearly foreshadowed the Court's declaration that compelled testimonial disclosures present weighty First Amendment issues. Any doubt as to the applicability of the First Amendment to legislative inquiry should have been resolved by this Court's declaration in *Rumely* that compelled disclosure before Congressional investigating committees of the political activities and associations of individual citizens is subject to the limitations of the First Amendment. There a Congressional committee sought to compel identification of persons who made "bulk purchases" of books from the "Committee for Constitutional Government". In deference to its "duty to avoid a constitutional issue" and since such compelled identification raised "doubts of constitutionality in view of the prohibitions of the First Amendment," this Court construed the Committee's authorization not to include power to compel such identification.

Any possible lingering doubts after *Rumely* concerning the applicability of First Amendment protections to legislative inquiry were put to rest by *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234. This Court said in *Watkins* (at p. 197):

> "Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom

[7] *Communications Assn.* v. *Douds*, 339 U.S. 382, 402.

[8] *Thomas* v. *Collins*, 323 U.S. 516, 538-41.

> of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of lawmaking. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking."

The Court emphasized in *Watkins* that "The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous" (at p. 197).

In *Sweezy* this Court made clear that the principles announced in *Watkins* for Congressional investigations apply with equal force to compelled disclosures before state legislative investigating bodies. Four Justices held Sweezy's interrogation an infringement upon First Amendment rights and declined to consider whether this infringement could be justified by any overriding state interest in the disclosures sought, since it was not clear that the legislature had authorized the inquiry addressed to Sweezy. Two members of the Court agreed with the other four Justices that Sweezy's First Amendment rights had been infringed and based their decision squarely thereon without reference to the issue of authorization. A majority of this Court clearly held the First Amendment's guarantees applicable to compulsory state inquiry.

The proposition which commended itself to a majority in *Sweezy* became the basis of a unanimous ruling of this Court in *NAACP* v. *Alabama*, 357 U.S. 449. This Court expressly found the demand for the membership rolls of

the NAACP to constitute "substantial restraint upon the exercise by petitioner's members of their right to freedom of association" (at p. 462). The *NAACP* decision leaves no doubt that freedom and privacy of association in civic, political and religious organizations is protected from unwarranted intrusion by governmental inquiry.

Watkins, Sweezy and *NAACP*, following upon the dictum in *Rumely*, affirm that legislatively-compelled disclosure of civic, political and religious association is an unwarranted intrusion upon First Amendment rights, at least in the absence of overriding governmental need. We respectfully submit that the intrusion upon petitioner's protected freedoms is both more severe and less justified by governmental need than the constitutional infringements in *Rumely, Watkins, Sweezy* and *NAACP*.

II. The Committee's Intrusion Upon Petitioner's First Amendment Freedoms.

The briefest examination of the questions petitioner refused to answer demonstrates the direct restraint on First Amendment rights implicit in compelling answers thereto. The questions require petitioner to reveal his relationship to local and national civic, political and religious organizations active in the field of civil rights, as well as to individual members thereof, in an atmosphere of bitter local hostility and antagonism to such associations.

This Court recently considered a demand for disclosure of NAACP membership and found the demand a "substantial restraint upon the exercise by petitioner's members of their right to freedom of association." It was emphasized that "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP* v. *Alabama*, 357 U.S. 499, 462.

The ruling in *NAACP* is necessarily applicable in the instant case wherein petitioner has been compelled to disclose not only NAACP affiliation, but also affiliation with other civic, political and religious groups. These organizations, no less than the NAACP, espouse causes and programs regarded by many Virginians as "dissident"; many of them are in the forefront of the effort to accomplish school integration and to secure equality for Negroes. We deem it unnecessary to belabor what is common knowledge—that, in the current atmosphere in Virginia, not inconsiderable hostility is brought to bear upon those who are members of these organizations.[9]

The intrusion upon cherished First Amendment freedoms is, if anything, more severe in petitioner's case than in the *NAACP* case. The Committee's sweeping demands for disclosure constitute unprecedented inquiry into association with a substantial number of civic and political groups representing wide and diversified interests and membership. Moreover, petitioner was asked to reveal associations not only with a wide range of civic and political organizations, but the Committee made gratuitous intrusion upon petitioner's freedom of religious association as well. Specifically, the Committee inquired concerning petitioner's association with the B'nai B'rith, the National Conference of Christians and Jews and the American Friends Service Committee.[10]

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[9] The pamphlet "The Shocking Truth" from the Fairfax Citizens' Council (R. 84) itself shows the unfavorable comparisons and characterizations to which members of civil rights groups are subject in Virginia. Elaborate documentation of the harrassment, intimidation, loss of employment and other manifestations of public hostility to which civil rights advocates have recently been subjected in Virginia may be found in the record in this Court in *Harrison* v. *NAACP*, No. 127, October Term, 1958, at Tr. 171, 173, 176-8, 184-7, 193-201, 205, 209-212, 218-225, 229-232.

[10] The Thomson Committee's demands for identification of religious association, not only from petitioner but other witnesses as well (see the Washington Post and Times Herald, Nov. 15, 1957, p. A-1; Nov. 17,

Nor does the fact that most of the organizations are held in high public esteem by responsible and thinking persons in Virginia and elsewhere render the demand

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1957, p. D-13), is a reminder of less subtle inquisitions into religious association to which Jews, Catholics and Protestants were historically subjected. An excellent study by Professor George H. Williams, "Reluctance To Inform", appearing in the July 1957 issue of *Theology Today*, traces the history of compelled informing in each of these religious traditions and the consequent strong religious theme of hatred and contempt for the informer. Professor Williams finds:

> "From our survey of an impulse in the three major religious traditions which have shaped American society, Jewish, Catholic, and Protestant, it is evident that the seemingly 'natural' reluctance to expose 'the names of the brethren' is grounded in the millennial experience of minority groups in safeguarding themselves in a hostile society and in the doctrine of the priesthood of all believers with its attendant scruple of confessional secrecy. The common ground of all the laws, canons, precepts and testimonies in the three traditions surveyed is that the adherents of diverse religious minorities have not regarded their own group as basically inimical to society at large and have therefore not considered it seditious to refuse, at hearings or in court, to expose members of their own group to unwarranted investigation and social molestation or reprisal by revealing their names."

We particularly commend to the Court's attention the concluding admonition of Prof. Williams' study:

> "In the light of the long history of opposition to informing, especially in the dissenting and minority traditions, it would appear that the best recourse of a state, the judicial and legislative organs of which respect the individual conscience, is to remain content to endeavor to convince the conscientiously reticent of the clear and present danger to society involved in his withholding the names of, and information concerning, *demonstrably* dangerous members of society. In restraining itself from probing too far or demanding too much in this area of the religiously sensitized conscience, the state . . . may justify its judicial patience on the ground that it is out of the stuff of intimate confidence, partial and even perverse loyalty, fraternal coherence, and charitable discretion that the larger cohesions of the commonweal are drawn . . . In a modern mobile society the consideration of kinship, which in canon law justified taciturnity about the misdeeds of a relation and which even today legally prevents spouses from testifying for or against each other, has been in part replaced in psychological importance by the intimacies of voluntarist societies to which the democratic citizen often feels much closer affinity than to blood relations privileged in canon law to the fourth degree."

for disclosure harmless. Persons may be dissuaded and discouraged from joining the most laudable causes if their membership might bring a subpoena requiring them to defend their associations in a censorious governmental inquiry. Indeed, merely being called before a body such as the Thomson Committee is a degree of stigmatization—a person compelled to appear before an apparently hostile governmental authority is subjected to the idle curiosity of the general public, the suspicion of many credulous persons and the hatred and hostility of the bigoted minority.

It will hardly be denied that most of the organizations about which petitioner was asked are pro-civil rights groups which, in Virginia today, fall within the category this Court described as "dissident" in *NAACP* v. *Alabama*, *supra*.* In any event, freedom of association is not limited to dissident groups. First Amendment freedoms do not assure liberty of association only for unpopular groups; they provide a general and unselective assurance that the right to join civic, political and religious causes will not be impaired by governmental action. Petitioner's compulsory disclosure of membership and association with the NAACP, the ACLU, the ADA, the Friends and like organizations, is a disparagement and discouragement equally restrictive of his own freedom and the freedom of others to undertake such associations. In the face of these restraints, we turn now to the question whether the disclosures sought from petitioner can possibly be justified.

III. Absence of Justification for the Committee's Intrusion on Cherished Liberties.

This Court stated in the *NAACP* case that the "interest of the State must be compelling" to justify the adverse effect which disclosure of membership may have on freedom

of association. In the instant case there is not only an absence of "compelling" governmental "interest," but an absence of any justification whatsoever for the Committee's invasion of petitioner's liberties. Even less than in *Watkins, Sweezy* or *NAACP* is the inquiry in this case justified by any governmental need for the answers sought.

The Committee's questioning of petitioner was based on no more than unverified allegations in a pamphlet by an unknown organization which linked petitioner with various civic, political and religious organizations.[11] The only justification that the Committee could offer in the courts below for addressing its questions to petitioner was that they would enable it to determine whether in fact those organizations are "inter-racial" in character and would help verify the charge of petitioner's connections therewith.[12] Nothing can illustrate more forcefully just how specious and tenuous is this attempted justification than Chairman Thomson's own testimony (R. 32-33):

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[11] While Chairman Thomson intimated in his testimony in the Circuit Court that the pamphlet "The Shocking Truth" was not the sole cause for petitioner's interrogation (R. 19), the Chairman's impression was contradicted by Committee Counsel whose statement makes clear that petitioner was called solely because of the allegations in the pamphlet (R. 18-19). At any rate, as Chairman Thomson fully conceded "I called Mr. Scull to establish whether or not what was reported in there [the pamphlet 'The Shocking Truth'] was true (R. 20, 32, 33)." Apparently the questioning of petitioner on so flimsy a basis was not unusual, for Chairman Thomson boldly volunteered his practice of proceeding on the basis of nothing more than "anonymous telephone calls" (R. 20).

[12] It should also be noted that even more than in *Watkins* and *Sweezy*, the Committee's inquiry was lacking in authorization from the parent body. The Virginia Assembly authorized the Committee to investigate the activities of organizations "which seek to influence, encourage or promote litigation relating to racial activities in this state." Chairman Thomson, however, was less interested in organizations which engage in Virginia *racial litigation*, of which there are few, than he was in organizations with *inter-racial membership;* most of the organizations concerning which petitioner was questioned are therefore inter-racial in membership, but do not engage in racial litigation. Chairman Thomson was quite candid in conceding that his questioning far exceeded his authorizing resolution:

"Q. Can you tell me exactly how the question: 'Has the National Conference of Christians and Jews used that box number?' is pertinent to the question, to the subject under inquiry?

A. In two ways:

First of all, if he were a member, assuming he answered in the affirmative, we would have asked him if it was a racial organization. I do not happen to know, myself. If it is a racial organization, it would have been a matter itself for further inquiry.

Q. You don't know whether the National Conference of Christians and Jews is a racial organization, Mr. Thomson?

A. No, sir, I know nothing about it, to be very frank with you." [13]

Certainly something more than this is required before the state may compel a citizen to reveal his civic, political and religious associations.

Indeed, petitioner's questioning was so utterly lacking in legislative need or governmental justification that Chair-

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At petitioner's hearing he had said *"by 'racial' I mean organizations whose membership is inter-racial in character . . ."* (R. 81). In the Circuit Court Chairman Thomson did not seek to hide this departure from the authorizing resolution; on the contrary, he justified it on the ground that the legislature might authorize such an inquiry in the future, stating "we were trying to determine through his testimony whether in fact those organizations are racial in character, whether *at a future time* the legislature might wish to authorize an investigation of those subjects" (R. 29) (emphasis added). Since the Committee's authorization was not to investigate "organizations whose membership is inter-racial in character" but only those which "promote litigation," the Chairman sought to justify the inquiry on the presumption that the legislature would "at a future time" authorize a broader investigation encompassing such organizations. That, of course, is what *Watkins* and *Sweezy* condemn.

[13] The patent absurdity of justifying the questioning on the ground that the Committee was trying to determine whether the organizations were "inter-racial" in character is evidenced by the Committee's questions about the obviously inter-racial NAACP and the inter-racially named "Washington Inter-Racial Workshop" (R. 80-81).

man Thomson was even unable to state the subject under inquiry to which the questioning was supposed to relate.[14] At the Committee hearing, Chairman Thomson identified the three statutory subjects of investigation concerning organizations engaged in racial litigation as (1) tax exemption, (2) the threat of integration, and (3) violation of certain champerty, barratry and maintenance laws (see *supra*, n. 4, p. 11). In the Circuit Court, he testified that petitioner's questioning was unrelated to the first but was related to the second subject (R. 29-30); as concerns the third subject, he testified successively that petitioner's questioning had not been related to it, that it had been related to it, that it had not been related to it, and finally that it had only been related to it (see *supra*, p. 13).

Chairman Thomson's equivocal testimony thus rules out either tax exemption or "champerty, barratry and maintenance" as the subject under inquiry. Nor does his testimony that the subject of the Committee's investigation in the interrogation of petitioner was "integration or threat of integration on the public school system of Virginia, or the general welfare of Virginia" (R. 29-30) provide a possible justification for petitioner's interrogation. If this manifestation of "massive resistance" can properly be a subject of inquiry at all, which we doubt (see

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[14] The Committee's inability to specify some cogent and delimited subject under inquiry is not only persuasive of the absence of justification for petitioner's interrogation but also invokes the due process prohibition recently applied in *Watkins* v. *United States*, *supra*. The confusing answer given petitioner at his hearing (see n. 4, p. 11, *supra*), was compounded by the complete inability of the Committee Chairman to produce in the Circuit Court an understandable subject of inquiry to which the questioning might conceivably be related. Since neither the authorizing statute nor the Committee's attempted illuminations provided a basis upon which petitioner could determine, before the point of jeopardy had irrevocably been reached, whether he was legally obliged to answer, he was denied the fair notice guaranteed by the due process provisions of the Constitution as applied in *Watkins*.

Section IV. below), there is still lacking any demonstrable relationship between the questions addressed to petitioner and this subject. Whatever justification Virginia could derive from its interest in "the threat of integration on the public school system," Chairman Thomson's attempt to determine whether the NAACP, the B'nai B'rith, and the National Conference of Christians and Jews were "racial" organizations, simply cannot be related to this supposed subject of Virginia's concern.

In sum, petitioner's interrogation cannot be justified by Chairman Thomson's remarkable curiosity as to whether organizations such as NAACP, the B'nai B'rith, and the Washington Inter-Racial Workshop were inter-racial in character. Moreover, the Virginia Legislature had indicated the three areas where information was sought and the questioning of petitioner cannot be related to any of them. Finally, it must be a requirement, in demonstrating legislative justification for intrusion upon First Amendment rights, that the Committee be able to explain the need for the information in simple and explicit terms; no explanation—simple, explicit or otherwise—appears anywhere in this case.

IV. Petitioner's Interrogation Not Only Unjustified but Tainted by Unlawful Purpose.

Certainly enough has already been shown to demonstrate the absence of any governmental justification for compelling petitioner to answer. We cannot refrain from pointing out, however, that the intrusion on First Amendment rights in the instant case is not only unsupported by any tangible legislative need, but is affirmatively tainted by a clearly unjustifiable and unlawful legislative effort. The only consistently asserted justification in the enactment of the Committee's authorizing statute and in its activities un-

der that statute, was the illegal and unconstitutional purpose of resisting integration.[15] The declared unlawful purpose of the Committee's interrogation repels the possibility that its inquiry was a justified intrusion upon First Amendment freedoms supported by some valid legislative "need"; and this declared unlawful purpose also brings into play the equality guarantee of the Fourteenth Amendment, which may no more be nullified indirectly than directly. *Cooper* v. *Aaron*, No. 1, August Special Term, 1958.

The legislative history of the enactment of the Thomson Committee's authorization clearly and explicitly reflects the determination of the Assembly, and the Governor who called it into special session, to nullify the right to integrated public schooling by harassment of the organization most actively seeking in the courts to vindicate the constitutional right to integrated public schooling. The Committee's questioning of approximately 100 persons connected with the NAACP, while calling but one witness connected with any other organization, is itself a demonstration of how closely Chairman Thomson was able to pursue his public promise that his investigation would be used "to

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[15] Petitioner's contention concerning the purpose of the Committee's inquiry does not contravene the statement in the *Watkins* opinion (at p. 200) that the solution to the problems there raised "is not to be found in testing the motives of committee members." What is relied on here is not covert motives but unsolicited and overt contemporaneous expressions of purpose by the Assembly, the Governor and the Committee. In any case, this Court has not hesitated to strike down state legislative and executive action whose purpose was found to be racially or otherwise discriminatory. See *Yick Wo.* v. *Hopkins*, 118 U.S. 356, 347; *Guinn* v. *United States*, 238 U.S. 347; *Grosjean* v. *American Press Company*, 297 U.S. 233; *Lane* v. *Wilson*, 307 U.S. 268; *Niemotko* v. *Maryland*, 340 U.S. 268; *Terry* v. *Adams*, 345 U.S. 461. Indeed, this Court most recently predicated its decision in the Little Rock case (*Cooper* v. *Aaron*, No. 1, August Special Term, 1958) on the fact that the conditions of which the state there complained were "directly traceable to the actions of legislators and executive officials of the state of Arkansas, taken in their official capacities, which reflect their own determination to resist this Court's decision in the *Brown* case . . ."

keep the NAACP out of litigation, which is the heart of the organization."

Unfortunately, Chairman Thomson's excesses are not an isolated departure from civilized standards of legislative conduct; on the contrary, what happened in Virginia must be viewed against the pattern of similar action throughout the states "massively resisting" desegregation. The Southern states which have so far resisted any degree of public school integration, have utilized legislative inquisition as an effective weapon against the NAACP and others who support the effort of Negroes to achieve equality. *Appendix B, infra*, pp. 41 to 75, a "*Chronology of Anti-integration Investigations in the South*" demonstrates that legislative investigation as an anti-integration device has been widely employed or threatened in Alabama, Georgia, Florida, Louisiana, Mississippi, South Carolina and Virginia:[16]

Alabama

In Alabama, anti-NAACP investigation has so far been rendered unnecessary by the issuance in June, 1956 of a state court injunction prohibiting the NAACP from conducting any business in Alabama. Nevertheless, a series of resolutions calling for legislative investigation of the NAACP and the supporters of integration have been introduced in the legislature. Representative is a statement by the legislative proponent of a resolution asking for the names of students who signed a petition urging readmission of Autherine Lucy to the University of Alabama: "Let's find out who these students are who want to go to school with

[16] The following summaries are based upon material appearing as *Appendix B* to this brief. This material, extracted without alteration from objective reports in the *Southern School News*, represents the history from May of 1954 to the time of the printing of this brief of the anti-integration and the anti-NAACP legislative investigations in the South.

Negroes, and let's let them go . . . it is time to let the people know that white supremacy is going to stand in Alabama."

Florida

In Florida, a special anti-NAACP legislative investigating committee was established in 1956. It held hearings in 1957 and 1958 wherein numerous witnesses from the NAACP, the ACLU and various inter-racial organizations were questioned. Witnesses included ministers, teachers, litigants in integration cases and individuals who support integration. The purported basis of the hearings has been, in the words of the Committee Chairman, "a link between the Communist Party and the NAACP." When in July of 1958 the Florida Supreme Court decided a test case upholding the committee's right to subpoena NAACP records, the Chairman announced that "now the committee can go ahead with its plans."

Georgia

In Georgia, the 1958 legislature approved a resolution to investigate "controversial bi-racial Koinonia Farms" and established a special "race suit" study committee. The committee, organized in June of 1958, has announced it will conduct investigations to determine whether racial discrimination suits brought in Atlanta violate state barratry laws.

Louisiana

In Louisiana, a legislative committee held hearings in 1957 on "Communist influences behind racial unrest in the South." In the summer of 1958, the legislature initiated two separate investigations of pro-integration sentiment in state universities after 66 LSU faculty members signed a petition urging defeat of pending segregation legislation.[17] A focal point of the investigations is the allegation that sub-

[17] A candid characterization of anti-integration investigating committees in the South is the statement of segregation leaders William

versive influences are behind pro-integration sentiment. In the words of Representative Garrett "integration is the southern expression of communism." Signers of the LSU petition have been sent legislative questionnaires on their racial convictions and it has been indicated that they will be subpoenaed as witnesses.

Mississippi

In Mississippi, the legislature established a State Sovereignty Commission in 1956 with full subpoena power, as a watch-dog against "racial integration" and "federal encroachment." The committee's investigation division which has hired secret investigators and informants has an assignment to check on maneuvers of those seeking to force integration in Mississippi, in the words of Governor Coleman, "so we can be ready for all counterattacks." In the spring of 1958, the legislature approved an investigation of the NAACP to determine its "means, methods, associates and ultimate objectives."

South Carolina

In South Carolina, the 1956 legislature established an investigation of NAACP activities in the Negro State College at Orangeburg. The sponsor of the resolution explained that "such an investigation would determine who are members and sympathizers of the NAACP among the faculty and student body, the extent of such member participation in such activities and whether or not its members are misleading the Negro citizens and misrepresenting the aims and objectives of the NAACP to the Negro people." The committee held hearings on the campus, at which it questioned a number of staff and faculty members and others. In the spring of 1958, the legislature established

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Rainach and John Garrett of the Louisiana State Senate and House who, in July 1958, when questioned about their investigation of the 66 LSU faculty members, insisted they were "not off on a witchhunt" but were bent on "exposing a small clique of professors . . ." (*infra*, p. 55).

a permanent committee to investigate Communist activities in the state after a message from the Governor expressed concern over reports of Communist connections within the faculties of two Negro colleges.

In Virginia, the legislature established the Thomson and Boatwright committees in 1956 with over-lapping jurisdiction to investigate the NAACP and integration suits. Both committees held extensive hearings in 1957 inquiring into NAACP membership and subpoenaing NAACP members, parents of litigants and others involved in integration suits. In 1958, the authorizations of the two committees having expired, the legislature approved the creation of a special legislative committee to continue the work of the two former committees.

Virginia

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These anti-integration "investigations," authorized and undertaken since this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, are sometimes thinly veiled but more often publicly acknowledged governmental efforts at harassment, intimidation and punishment of those who, by litigation, organization, or persuasion, support school integration and equality for Negroes. Petitioner is one victim of a crude, albeit candid, effort in Virginia and elsewhere in the South, to deny the NAACP, its members and others, free and equal access to the courts to obtain the rights recently recognized in the *Brown* case.

The Fourteenth Amendment assures unfettered and nondiscriminatory access to the courts for the redress of grievances and the assertion of constitutional rights. *Truax* v. *Corrigan*, 257 U.S. 312, 334; *Terral* v. *Burke Construction Company*, 257 U.S. 529; *Barbier* v. *Connolly*, 113 U.S. 27,

31. Only recently this Court evidenced its concern for equality of access to appellate courts and struck down under the Fourteenth Amendment state action denying such equality. *Griffin* v. *Illinois*, 351 U.S. 12. Denial or restriction of access to the courts is no less state action because it is implemented through legislative investigation. *Cf. Watkins* v. *United States, supra*, at p. 197 and *NAACP* v. *Alabama, supra*, at p. 463. Equal protection of the laws requires equal access to the courts. "The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly . . ." *Cooper* v. *Aaron*, No. 1, August Special Term, 1958.

Since the Committee's interrogation of petitioner was an instrumentality for the accomplishment of the illegal and unconstitutional purpose to deny to the NAACP, its members and others, equal access to the courts, petitioner's conviction contravenes the Fourteenth Amendment's guarantee of equal protection. Moreover, legislative interrogation to achieve results "devastating to the NAACP," which would "bust that organization wide open" by discouraging membership therein under pain and penalty of governmental interrogation and censure, is plainly contrary to the guarantees of the First Amendment. Certainly petitioner's interrogation cannot be validated by this kind of "governmental need" while the First and Fourteenth Amendments retain the meaning with which they have been imbued by constitutional history.

V. Conclusion

The legislative inquisition to which petitioner and others in the South who favor civil rights and equal protection for

Negro Americans are daily being subjected, has as its major objective restraint, harassment and retribution. The anti-integration investigating committees are therefore rarely concerned with activity potentially the subject of legislation—their "investigations" amount to little more than the demand for the names and associations of individuals dedicated to improved race relations and civil rights.[18]

In Virginia, for instance, the Boatwright Committee's principal activity in 1957 was the demand for the names of Virginia NAACP members. See *NAACP* v. *Committee on Offenses, cert. pending,* No. 84, October Term, 1958. The Thomson Committee likewise sought and obtained NAACP membership lists, but, of course, the matter did not end there. When the Committee called the petitioner, it inquired concerning still other individuals: Miss Caroline H. Planck and Mrs. Barbara Marx, persons active in race relations work in Arlington, Mrs. Marx having been head of the Arlington NAACP; Dr. E. B. Henderson, leader of the Virginia NAACP; Mr. Warren D. Quenstedt, Demo-

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[18] In the area of legislative investigation illegality of purpose appears almost always to be accompanied by illegality in procedure; to "exposure" committees, whose ultimate purpose is itself illegal, the method by which that purpose is achieved is of small moment. Chairman Thomson, for instance, conceded that his Committee had no published rules whatever, and he could recall only two unpublished rules, one of which provided for a quorum, while the other provided for reporting of the Committee's hearings. Certainly the first requirement of a governmental agency which presumes to obtain evidence by compulsory process is a body of rules upon which witnesses may rely in determining their rights. And this is but one respect in which the Committee failed to observe minimal procedural rights. As conceded in the Committee's final report to the Legislature (p. 3), in Prince Edward County, "Those witnesses who were represented by Counsel had previously given statements to investigators for the Committee and these statements were tape-recorded by the Investigators without the knowledge of the witnesses." In addition, as demonstrated in petitioner's case, the Committee failed to inform witnesses of the precise subjects of its inquiry and called them discriminatorily, without reason to believe that they could provide pertinent information upon subjects authorized in its enabling statute. See *supra*, n. 12, p. 26, n. 14, p. 28.

cratic candidate for Congress; and Mr. E. A. Prichard, Fairfax attorney and Vice President of the Virginia Council of Churches. None of the thirty-one questions addressed to petitioner concerned his activities—most of them were either demands for the identification of others or of petitioner's association with civic, political and religious organizations.

Diligent speculation fails to reveal any grounds upon which Virginia or any other jurisdiction could successfully justify inquisition into civic, political and religious association such as that to which petitioner has been subjected. No more by investigation than by lawmaking may legislatures go beyond the permissible area of reprehensible group activity into the forbidden area of individual association itself.[19] In any event, Virginia had no demonstrable legislative need for the information demanded of petitioner; there is nothing presented in petitioner's case to justify the Committee's deliberate massive intrusion upon his freedom and privacy of association with others in promoting race relations and civil rights in Virginia.

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[19] A number of considerations seem to preclude individual civic, political and religious association as a permissible subject of legislative inquiry. First, since legislation relates to general rather than individual norms, the disclosure of individual association appears to serve no legitimate purpose. Nor does the fact that individual membership may throw light upon the larger subject of group association lead to a different result, for it is doubtful whether the First Amendment permits legislation, and therefore investigation, concerning that larger subject. And finally, even assuming that upon a showing of illegal or dangerous group activity, association itself may become subject to legislative restraint, this would neither necessitate nor justify demands for wholesale disclosure of individual association. In the light of these considerations, it is difficult to imagine the governmental interest sufficiently compelling to render individual civic, political and religious association subject to compulsory disclosure.

For the foregoing reasons it is submitted that petitioner was constitutionally protected against the compulsory disclosures demanded of him by a Virginia racial activities investigating committee, and that the judgment affirming his conviction and sentence must accordingly be reversed.

Respectfully submitted,

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APPENDIX A

QUESTIONS ADDRESSED TO PETITIONER BY THE THOMSON COMMITTEE WHICH HE HAS REFUSED TO ANSWER (R. 76-82)

(1) "Are you a member of The Fairfax County Council on Human Relations?"

(2) "Are you a member of the National Association for the Advancement of Colored People?"

(3) "Have you contributed to any of the suits, contributed financially to any of the suits designed to bring about racial integration in the public schools?"

(4) "Have you paid court costs in any of the suits designed to bring about racial integration in the State of Virginia?"

(5) "Have you paid attorneys' fees to any attorneys in regard to racial litigation involved in the integration of the public schools in Virginia?"

(6) "Have you attended any meetings at which the formulation of suits against the State of Virginia in racial integration suits in the public schools have been discussed?"

(7) "I notice in your statement that you say that you think you have a moral duty to counsel with a fellow citizen as to his legal rights if he is ignorant of them. Do you feel qualified to counsel with him as to his legal rights?"

(8) "Who else uses that box number [No. 218 in Annandale, Va.] besides yourself?"

(9) "Does the Fairfax County Council on Human Relations use that box?"

(10) "Has the NAACP used that number from time to time?"

(11) "Has the organization know as the Citizens Clear ing House used that box number?"

(12) "Has the Fairfax County Federation of PTA's used that number?"

(13) "Has the Fairfax County Federation of P-TA Workshops on Supreme Court Decisions on the Public Schools used that box number?"

(14) "Has Miss Caroline H. Planck or Mrs. Barbara Marx used that box number?"

(15) "Do you know Mrs. Planck or Mrs. Marx?"

(16) "Has Dr. E. B. Henderson used that box number?"

(17) "Has the National Conference of Christians and Jews used that box number?"

(18) "Has the Save Our Schools Committee of Fairfax County used that box number?"

(19) "Has Mr. Warren D. Quenstedt used that box?"

(20) "Has Mr. E. T. Prichard used that number?"

(21) "Has the American Civil Liberties Union used that same box number?"

(22) "Has the Americans For Democratic Action, known as ADA, used that box number?"

(23) "Has the Japanese-American Citizens League used that box number?"

(24) "Has the Washington Inter-Racial Workshop used that same number?"

(25) "Has the American Friends Service Committee used that box number?"

(26) "Does the Community Council for Social Progress use the same box number?"

(27) "Does B'nai B'rith use that same box number?"

(28) "Does the Communist Party use that box number?"

(29) "Do you belong to any racial organization, and by 'racial' I mean organizations whose membership is inter-racial in character or organizations that are instituting or fostering racial litigation?"

(30) "Have you ever been called as a witness before any Congressional Committee?"

(31) "Has your name ever been cited by any Congressional Committee as being on any list of members of any organizations that are cited as subversive?"

APPENDIX B

Chronology of Anti-Integration Investigations In The South—Excerpts from The Southern School News

Alabama

March 1956

"State Rep. W. L. (Doc) Martin of Greene County warned that if Alabama whites continue to give and be compromised on the race issue, 'we will have but three choices to make—sell our homes and get out of Alabama, be humiliated or take up our shotguns.'

Martin made the statement in support of a resolution he had introduced to the legislative interim committee on education, requesting Dr. Carmichael to furnish the committee the names and addresses of all students who signed a petition urging the readmission of Miss Lucy.

'Let's find out who these students are who want to go to school with Negroes, and let's let them go . . . it is time to let the people know that white supremacy is going to stand in Alabama.'"

April 1956

"'. . . on the opening day of the special session, March 1, the House approved (75-0) a resolution calling for an investigation to determine if the Alabama chapter of the National Association for the Advancement of Colored People had been infiltrated by Communists. The resolution, sponsored by Rep. T. K. Selman of Walker County, would have made Miss Lucy the first witness to be subpoenaed. The proposal was buried in a Senate committee.

Rep. Charles Ramey of Hale County introduced a resolution requesting that University of Alabama President O. C. Carmichael forward to the legislature the names of all those who signed a petition in February urging the readmission of Miss Lucy after she had been suspended from classes following the campus demonstrations. Like the other proposals above, this too was still in committee."

Alabama (Cont'd.)

May 1957

"State Sen. Sam Engelhardt of Macon County, head of the Alabama Association of Citizens Councils, announced in mid-April he will introduce a bill which would create a 'State Sovereignty Commission' with virtually unlimited powers to direct Alabama's fight to preserve segregation.

Patterned after similar groups in other southern states, the nine-member commission would include the lieutenant-governor, two members of the Senate, three members of the House and three laymen. Englehardt said he would seek $50,000 to meet expenses of the commission during its first year of operation.

The Englehardt bill does not mention race, but the senator admits that the purpose of the proposal is to strengthen the state's stand on segregation.

The commission would have vast powers—the right to subpoena and examine witnesses, to require the appearance of any persons and the production of any books, records, papers or documents as evidence. Obedience would be enforced by orders of attachment. Refusal to comply would be punishable by 'fine or imprisonment in the discretion of the commission.'

The commission would be authorized to 'employ such legal, professional, expert, secretarial, clerical and other help deemed necessary to carry out its business.' This would permit the employment of private detectives or other investigators.

In a TV interview April 14, Gov. James E. Folsom called the proposed commission an 'inquisition.'"

June 1957

"On May 25, State Sen. Vaughan Hill Robison of Montgomery introduced a resolution calling for a broad legislative investigation of organizations 'responsible . . . for attacks' on segregation in Alabama. The measure is aimed not only at the NAACP, which is still under a court order restraining it from operating in Alabama, but other organi-

zations formed since the NAACP injunction. The investigating group would have power to subpoena witnesses and records, administer oaths and take testimony. The resolution stipulates that the report should be made to the legislature within 40 days after the resolution is passed.

The resolution notes a 'planned attempt on the part of a certain undesirable, irresponsible element of our society to subvert and destroy the established social order of this state.'"

Florida

August 1956

"A resolution setting up a powerful seven-man committee to investigate the activities of the NAACP was pushed through the Senate and sent to the House. It was not a part of the governor's program.

The committee would have subpoena powers and a $50,000 fund to employ legal and administrative aides. It would also develop restrictive legislation to be proposed to the next regular session in 1957."

September 1956

"This was what the special session enacted:

A law setting up an interim committee of three senators and four representatives to investigate the National Association for the Advancement of Colgred People.

The NAACP resolution was one of the most discussed outcomes of the special session. It was not part of the Collins program and there were substantial grounds for belief the governor would veto the measure. He allowed it to become law without his signature.

The committee has $50,000 to employ counsel and investigative aides. It has broad subpoena powers. Organization and preliminary sessions are expected to begin in September."

November 1956

"The joint legislative committee created to investigate the National Association for the Advancement of Colored

Florida (Cont'd.)

People—part of the state's program to preserve segregation—set up formal organization.

The first assignment handed Hawes and Cheasty by the investigative group was to determine if 'outside elements' were responsible for the Tallahassee bus boycott."

December, 1956

"The interim legislative committee investigating activities of the National Association for the Advancement of Colored People said its month-old study has developed evidence of a 'pattern' in the affairs of the organization.

John Cheasty of New York, special investigator for the committee, said the findings could not be released at this time. He promised a progress report at the next meeting set for Dec. 11.

Members of the committee said the investigation is 'really rolling.' A 96-page report has been compiled 'based on specific instances of what this committee is interested in.' However there was little hint of what the committee is doing. 'We have gathered information on the NAACP and one or two other organizations,' said Mark Hawes, of Tampa, chief counsel. 'I don't think it would serve the committee's endeavor to be more specific than that.'

Committee staff has conferred with officials in Texas, where an investigation of NAACP is under way. Cheasty went to Washington for a conference with Robert Morris, chief counsel for the Senate Internal Security Committee.

The committee has been holding secret sessions. Rep. Henry Land, Orlando, chairman, said this procedure was followed to prevent 'witch hunts.'

State financial records indicate the committee is paying for information. They list payments of $50 to 'Informant A' and 'Informant B.'

C. Farris Bryant, former speaker of the Florida House of Representatives and candidate for governor in the primary last spring, said the work of the special committee is expected to result in anti-NAACP laws when the legislature meets in May."

Florida (Cont'd.)

March 1957

"The Florida legislature begins its biennial session in April and the segregation issue suddenly looms large.

The legislative committee investigating the NAACP said it will introduce bills that will 'almost entirely suppress race agitation.'

The NAACP investigating committee has been rushing to complete its work before the legislature meets. Emphasis in the public meetings has been on linking NAACP to the various suits against segregated schools, bus seating, and public recreational facilities.

Edward D. Davis, Ocala, a former state NAACP president, was questioned about the origins of the *Virgil Hawkins* case. Hawkins, a Daytona Beach Negro publicist, has been trying for five years to enroll as a graduate law student in the University of Florida.

At the conclusion of the Tallahassee phase of the hearings, Sen. Dewey Johnson, Quincy, a committee member, said that new state laws will be offered that 'will almost entirely suppress professional race agitators.' "

May 1957

"The debate over interposition dramatized the race issue, but there were other facets. One was the report of the special interim committee which has been investigating 'racial agitators.'

The committee said its studies indicated Communists were trying to stir up racial bitterness in the state. It introduced six bills which the chairman, Rep. Henry Land of Orlando, said would keep down agitation in the field of racial relations. These measures included a bill defining barratry, one providing fines for persons soliciting funds to finance litigation, and a registration measure.

Debate on the bills before the Senate Judiciary Committee, wire services reported, made it plain they were 'designed to curb the unbridled power of the NAACP to foster law suits striking down Florida's racial segregation laws.'

Florida (Cont'd.)

Sen. Dewey Johnson, member of the interim committee, said: 'Our committee found that the NAACP employs an attorney who goes out and gets names on a petition and represents them in law suits without ever seeing the litigants. It is purely agitating by the NAACP.' "

July 1957

"The joint legislative committee that has been investigating 'racial agitators' filed a report.

Evidence was clear, the report said, that attorneys for the National Association for the Advancement of Colored People have solicited signatures to petitions seeking admission of Negro children to white schools. In some instances the report said, signers did not know the purpose of the petitions. A case was cited in which a signer testified he thought he was petitioning for a new school building.

The report asked the Florida bar to look into the ethics of such conduct by NAACP attorneys.

The committee offered a group of bills, admittedly aimed at the NAACP. The only one enacted into law continued the life of the investigating committee for another two years."

August 1957

"The legislative committee investigating the National Association for the Advancement of Colored People has reorganized for two more years of activity.

Its new chairman is Sen. Charley E. Johns of Starke, former acting governor of Florida and an outspoken leader of segregation forces. Mark Hawes of Tampa was reappointed as chief counsel. The committee said it will enlarge its activities to consider the role of Communist influence in racial agitation in the state."

January 1958

"Newspapers speculated that the joint legislative committee investigating racial agitation is preparing to study

the Tallahassee Council on Human Relations, which seeks a peaceful solution of racial problems.

While a meeting of this organization was in session, an unidentified photographer entered, took a flash picture of the biracial group and fled. A check disclosed that an investigator for the legislative committee was in the hall outside the room where the public meeting was being held.

Though the investigator denied a hand in the picture-taking incident, the *Tampa Tribune* predicted that photograph 'is sure to pop up again,' when the legislative committee meets soon.

'The committee is almost certain to regard the council as a ready-made group to investigate,' the *Tribune* commented."

February 1958

"The conduct of attorneys in the *Hawkins* case is under study by the Florida Legislative Investigation Committee, set up primarily to look into affairs of the NAACP and organizations which 'agitate' litigation.

The committee reported, after hearings last summer, that the NAACP attorneys had 'stirred up' court action in the *Hawkins* case and school segregation cases pending in Dade and Palm Beach counties.

Hawkins himself was called as a witness and asked about the role the NAACP played in his long legal battle. The committee reported Hawkins' responses were 'evasive.' However, Hawkins denied that he had received assistance from the NAACP or that his attorneys were paid by that organization.

The legislative committee which has been involved in a controversy with the NAACP came under fire from one of its members. Sen. Marion B. Knight of Blountstown announced he would resign 'unless the committee starts functioning.'

Knight in a press conference charged that three faculty members of the all-white Florida State University were sent into the state to work in behalf of the NAACP.

Florida (Cont'd.)

Knight declined to name the professors because he said the charges 'have not been proven.' But he suggested the investigative committee call them as witnesses.

After his charges appeared in print, Knight said his information about the FSU faculty members came from informants that he hoped would be called as witnesses later.

Investigators for the committee said several white professors in the University system who are members of the NAACP may be called at future committee sessions."

March 1958

"The joint legislative committee investigating racial agitation in Florida turned its attention to communism as it resumed activity after almost a year.

Principal witness at the Tallahassee hearing was Joseph Brown Matthews, one-time investigator for the U.S. Senate committee headed by the late Sen. Joseph McCarthy.

'It is basic in Communist strategy to accentuate and exploit every situation of social tension and turbulence,' said Matthews. 'The Communists exert every possible effort toward manufacturing them.'

Matthews testified that 'Communists or Communist influence were directly involved in every major race incident of the past four years since the Supreme Court "legislated" on the subject of integration.'

The witness repeated charges that 145 national officers or board members of the NAACP 'have records of affiliation with Communist organizations.'

The testimony followed a statement by Sen. Charley E. Johns, committee chairman, that it was 'the plain duty and firm intent of this committee to develop facts within its possession concerning subversion in this state.'

Johns, former acting governor and sponsor of segregation bills at the past two legislative sessions, denied that the committee is 'engaged in a witch hunt.'

'One of the aims of the Communist Party in Florida and elsewhere in the South is to agitate racial conflict and

unrest,' he said. 'This phase of the Communist Party activity in Florida will be thoroughly developed.'

A highlight of the Tallahassee hearing was the denunciation of the committee by James S. Shaw, Tallahassee merchant and treasurer of that community's Council on Human Relations. Shaw was called as a witness but was not allowed to complete his statement.

'It seems to me there is something wrong in this situation,' said Shaw after the committee ordered him from the stand. 'When the committee called me it cast aspersions on me and the organization I repesent.'

After lengthy discussion, during which Rep. W. C. Herrell of Miami threatened to resign if the witness were gagged, Shaw was allowed to continue.

He explained that the Tallahassee Council on Human Relations was not a secret organization but held public meetings, usually at the Leon County courthouse.

It was set up, he said, as a 'line of communications between Negroes and whites. One of our hopes was to relieve tensions between races caused by statewide political campaigns,' Shaw said.

At this point Shaw again was halted by a committee vote. 'We're wasting a lot of time listening to the background of this organization,' said Rep. W. G. O'Neill of Marion County.

Next session of the Johns committee is set for Miami where about 35 witnesses await questioning. These include local officials of the NAACP, Dade County Council on Community Relations and the American Civil Liberties Union.

Witnesses, including the Rev. Edward T. Graham, a Negro minister, challenged the committee's authority in court. They asked for an injunction which would quash the subpoenas. The petition said the real purpose of the committee is 'harassing, annoying and intimidating the petitioners because of the political views of the petitioners and others associated with the NAACP.' A decision is expected before the committee meets."

Florida (Cont'd.)

April 1958

"When the Florida legislative committee investigating groups which 'agitate' in racial affairs scheduled a Miami hearing, newspapers reported that 'fireworks are expected.'

Under subpoena were more than 30 witnesses. They included board members of the Dade County Council on Community Relations, the American Civil Liberties Union, the NAACP and some persons who had been accused previously of Communist ties.

A woman witness declined to answer questions about possible Red affiliations. Rep. W. C. Herrell of Dade County, a committee member, told her that any person refusing to cooperate with the committee and answer all questions 'was not fit to be a citizen of this state.'

The Rev. Theodore Gibson, NAACP leader and plaintiff in the long-standing suit attacking school segregation and the pupil assignment law was standing by to testify. Upon hearing Herrell's statement, Gibson told the committee that he would not submit to questioning.

Gibson said he felt Herrell's speech had disqualified the committee as an impartial investigative group. 'I am not a Communist, a Communist sympathizer or otherwise,' the Negro minister said as he left the hearing room.

Gibson and 14 others, who similarly refused to testify on constitutional grounds, were cited by the committee for contempt. The tactics of the witnesses, however, resulted in indefinite postponement of the committee's sessions.

Mark Hawes, committee counsel, said these witnesses had 'taken a determined and deliberate course of conduct that made it obviously of no use' for the committee to continue further along the same lines. The committee recessed, pending the outcome of the contempt citations.

Sen. Charley E. Johns, who heads the committee, said the hearing 'definitely showed a link between the Communist Party and the NAACP. We couldn't bring too much of it out because of the refusal of the witnesses to answer questions. But we had the evidence and in our minds we know there is a link.'

Florida (Cont'd.)

Committee counsel filed 'show cause' contempt proceedings in the courts and these promptly were countered by defense motions to quash. It seemed likely, attorneys for both sides said, that the constitutionality of the proceedings would be decided by the Supreme Court before any final decision on the contempt question."

July 1958

"The Florida Legislative Investigative Committee looking into alleged Communist pressure for integrated schools was given a green light by the Florida Supreme Court.

The court upheld the committee's right to subpoena records of the NAACP. In a unanimous decision the court said the committee has authority to 'investigate activities of any organization if it believes the welfare of the state is affected.'

Sen. Charley E. Johns, chairman, said he will call an early hearing in Miami where 15 witnesses who refused to testify at an earlier session have been cited for contempt. The citations have not been pushed pending a decision by the court.

'This is what we have been waiting for,' said Johns. 'Now the committee can go ahead with its plans.'

In the meantime, the committee set a meeting in Tallahassee and announced that top officials of the Ku Klux Klan in Florida have been subpoenaed as witnesses. About a dozen witnesses have been called and one committee source said an effort will be made to link one of Florida's 67 sheriffs with the KKK."

September 1958

"A full scale hearing in Miami by the interim legislative committee investigating groups involved in racial activity was called off after the Florida Supreme Court decided to look into a legal attack by four NAACP witnesses on the committee's powers.

The court hears arguments early in September.

Mark Hawes, committee general counsel, said NAACP legal maneuvers had 'hamstrung' the committee."

Georgia

February 1957

"Atty. Gen. Eugene Cook said he had drafted legislation for submission to the General Assembly which would:

(1) Have the legislature designate the NAACP as 'an organization subversive to the constitution and laws of the state of Georgia.'

(2) Create a legislative committee with authority to investigate the internal affairs of such organizations as the NAACP."

March 1958

"In addition to approving stiffer registration requirements for new voters, the legislature also: . . .

(7) Adopted a resolution to investigate controversial, bi-racial Koinonia Farms, near Americus."

April 1958

"Gov. Marvin Griffin signed into law several measures dealing with racial matters. He also authorized a legislative investigation of controversial bi-racial Koinonia Farms and approved a resolution aimed at the NAACP through a study of laws against barratry."

June 1958

"Three state senators were named by Lt. Gov. Ernest Vandiver to a special race suit study committee. Three House members had already been named.

The committee will seek to decide whether suits attacking segregation in Atlanta's public schools and in Georgia State College violate state barratry laws. It has subpoena powers and is expected to study circumstances under which the desegregation suits arose.

The House set up the committee to study statutory restrictions against barratry and rule on their adequacy."

Louisiana

April 1957

"The legislature's segregation committee held three-day hearings in Baton Rouge to find 'the causes of racial unrest in the South' and to 'paint the other half of the picture being given by the civil rights hearings in Washington.'

Communist agitation is behind race troubles, State Sen. William Rainach, committee chairman, said after the hearings. The six witnesses, all 'cooperative,' described what they called Communist infiltration into the NAACP, the Southern Regional Council, and church-centered groups seeking racial integration.

Rainach also urges Negroes to 'form their own organization with their own leadership' to represent them in working out their problems.

Spokesmen for groups criticized at the hearings later called the charges 'fantastic' and 'unjust.'

Dr. Rufus E. Clement, president of Atlanta University, who said he was one of the original incorporators of the Southern Regional Council, said, 'no thoughtful person will credit the word of a pair of ex-Communists against such decent, upstanding leaders as the Rev. Martin Luther King, Dr. Ralph Bunche, and Dr. Mordecai Johnson.'

Manning Johnson of Washington, D. C., and Leonard Patterson of Jamaica, L. I., N. Y., Negroes who said they were ex-Communists, were the 'star' witnesses of the hearings. The segregation committee, meeting in the appeals courtroom of the state capitol, also heard Joseph Z. Kornfedder of Detroit, identified as a former Communist leader, Mrs. Martha Edmiston of Middletown, O., who said she did undercover work in the Communist party for the FBI, and two New Orleans policemen: Asst. Supt. Guy Banister, former FBI agent, and Sgt. Hubert Badeaux, head of the intelligence division.

Johnson said King, Leader in the Montgomery, Ala. bus boycott, gives explanations for his actions 'which are the same as those of the Communist party . . . I think King should stand thorough investigation.' Johnson, who spent

nearly six hours on the witness stand, said King 'is leading the Negroes in the South down the road to bloodshed, violence and revolution.'

Other salient points in Johnson's testimony: The NAACP, well-infiltrated by Communists, is ripe for complete Red control; W. E. Dubois, first Negro member of the NAACP, was recently elected to the Communist party's national committee; the Southern Regional Council was formed by a Communist named James E. Jackson, later convicted under the Smith Act; Howard University in Washington is a hotbed of communism, and its president Mordecai Johnson, is an expounder of Communist doctrine; not all NAACP members are Communists—some are eggheads, liberals and socialists—but they all preach Marxism.

Patterson said the Communists came south to create race trouble as early as 1929. They concentrated on infiltrating churches and labor unions, he said, but they failed in getting Negroes, as a body, to accept communism.

Kornfedder said the NAACP is Communist-infiltrated but not yet Red-dominated. 'To have control,' he said, 'you must have enough penetration for a deciding voice in the upper councils. That isn't the case yet with the NAACP but it could be if the leadership doesn't become more alert and take more than an occasional potshot at communism.'

Sgt. Badeaux told how a police raid he led on a Communist's home in New Orleans turned up a booklet which described the NAACP as 'the most influential organization in the Negro national liberation movement' which was 'controlled by bourgeois reformists.' He said the Red plan was to seize control from the 'reformists.' Asst. Supt. Banister and Mrs. Edmiston said they were familiar with Communist plans to foment race trouble in the South."

July 1957

"Rainach's joint legislative segregation committee has received its operating funds for next fiscal year, but not from the legislature which met in May in a fiscal-matters-only session. The Board of Liquidation of the State Debt

approved $5,000 for segregation committee use for the rest of this fiscal year and $15,000 for fiscal 1958. The first $5,000 will be used to print and distribute copies of the proceedings of the committee's recent public hearings on 'Communist' influences behind racial unrest in the South.' The NAACP was principal target of the hearings.''

July 1958

''Louisiana's legislature ordered investigations of pro-integration sentiment in nine state colleges after disclosure that 66 LSU faculty members signed a petition urging defeat of new segregation proposals.

Two separate legislative investigations of state-operated colleges grew out of information that certain faculty members opposed the new school segregation bills.

One was aimed solely at Louisiana State University. A 10-man legislative committee was to report before the end of the current session in mid-July on 'subversive activities' among the faculty on the Baton Rouge campus. At committee hearings on the anti-mixing bills, it was brought out that 66 LSU faculty members signed a Louisiana Civil Liberties Union petition urging defeat of the bills.

Later, a seven-man subcommittee was established to conduct a similar investigation at all nine tax-supported colleges and to make a report at the next regular session of the legislature, in 1960.

At the end of June, matters stood this way:

(1) LSU President Troy Middleton was firm in his stand for 'academic freedom.' But he told the legislature no faculty member would be permitted to 'teach integration' because 'it is not a course at the university.'

The tall, Mississippi-born Middleton, a World War II combat general, told legislators he, personally, favored racial separation in public schools.

(2) Segregation leaders William Rainach in the Senate and John Garrett in the House insisted they were not 'off on a witch hunt,' but were bent on 'exposing a small clique

of professors who have been giving the state so much trouble for so long.'

(3) About 50 LSU faculty members had replied to a legislative questionnaire on their racial convictions. The rest who signed the LCLU petition had not been heard from, and Rainach had not disclosed which turn the LSU probe would take next.

The Tulane University Senate took a stand that the legislature's actions regarding LSU were 'implied denial of the right to free speech and petition.'

The Tulane Senate, made up of the university president, deans and directors, opposed 'legislative investigations when employed to intimidate petitioners.' The Tulane chapter of the American Association of University Professors took a similar stand. Garrett later told a Citizens Council rally in New Orleans 'more Tulane faculty members than LSU professors signed that integration petition.'

LSU's alumni council passed a resolution defending 'the good name of LSU and its reputation for independent expression of its faculty members.'

The key to understanding the college-probe situation was said to be contained in various statements by Garrett during the month. Speaking for the powerful legislative segregation committee, he emphasized that the 'subversive influences' in the colleges were pro-integration sentiments. At one point during the month's happenings he said, 'Communism and racism are inseparable . . . integration is the southern expression of communism.'

The whole affair started June 2 when New Orleans attorney George A. Dreyfous, president of the Louisiana Civil Liberties Union, gave the Rainach segregation committee copies of a petition calling the new segregation plan 'disastrous.' About 600 signatures were affixed to the petition.

August 1958

"The rush of the legislature to adjourn at mid-month obscured the three investigations of state colleges ordered

Louisiana (Cont'd.)

during the session. But the chairmen of these probes said they would push for action during the fall . . .

The three investigations, and results so far:

(1) A 10-man committee under Sen. Rainach probed for pro-integration sentiments at LSU, where 66 faculty members had signed a petition urging defeat of the Rainach committee's school segregation proposals. This investigation was begun June 10. On July 3, Rainach announced his investigators found no LSU teachers expounding desegregation in classrooms. But he said he found five who openly advocated integration outside the classrooms and 10 more who believe in race-mixing.

Rainach said the committee will make a full report before the LSU fall term begins.

(2) A seven-man committee was formed under Rep. Lester Vetter of Red River Parish to make an investigation of desegregation sentiments at all other state universities. This committee apparently has been inactive.

(3) Sen. F. E. Cole set out, with a seven-man committee, to look for un-American activities at all state colleges, including LSU. He scheduled a public hearing Aug. 29 in Baton Rouge.

Cole said he had 'no specific knowledge' of subversive influence at the colleges and didn't expect to find much, if any. He added his committee's purpose is to show parents disturbed by developments at LSU that 'our campuses are clean, and they can stop worrying.'

'If there are isolated instances [of Communist influence],' he said, 'then they can be brought to the attention of the proper college officials.' "

Mississippi

April 1956

"A 12-member commission, headed by Gov. J. P. Coleman, has been set up by the legislature as Mississippi's official 'watch-dog' against racial integration and federal encroachment on its sovereignty. . .

Mississippi (Cont'd.)

Mississippi's new State Sovereignty Commission, created at the current biennial legislative session, is authorized 'to do and perform any and all acts and things deemed necessary and proper to protect the sovereignty of the state of Mississippi and her sister states from encroachment thereon by the federal government or any branch, department or agency thereof; and to resist the usurpation of the rights and powers reserved to this state and our sister states by the federal government or any branch, department or agency thereof.'

It will also see that the directive giving effect to the Resolution of Interposition and addressed to public officials at all levels and contained in a separate legislative act is carried out. . . .

In addition to Gov. Coleman, other members of the 'watch-dog' sovereignty commission include Atty. Gen. Joe T. Patterson, Lt. Gov. Carroll Gartin and House Speaker Walter Sillers, as ex-officio members, and three citizens to be appointed by the governor, two senators named by the lieutenant governor, and three House members designated by the speaker.

The commission is empowered to subpoena witnesses, books, records, papers or documents as evidence and to use the courts to enforce obedience to any process. Failure to comply carries a fine of $100 to $1,000 and/or six months imprisonment in the county jail.

The commission is authorized to employ such legal, professional, expert and clerical help deemed necessary, and to receive contributions, donations and gifts of money and/or property from any state, department, agency, commission or subdivision thereof, and from any person, corporation or organization to be expended by it in carrying out its objectives and purposes.''

June 1956

''Mississippi's all-powerful, legislative-created State Sovereignty Commission, 'for the maintenance of segregation,' will employ secret investigators and informants in its

all-out legal effort to block enforcement of the anti-segregation rulings of the U. S. Supreme Court.

The investigation division, recommended by Gov. Coleman as the 'eyes and ears' of the commission, will be under Leonard Hicks, who resigned as chief of the State Highway Patrol to accept the assignment. Hicks is a former sheriff of Sharkey County (Rolling Ford), and a brother-in-law of former Gov. Fielding L. Wright, outspoken pro-segregation leader who died May 4 of a heart attack.

None of the secret investigators to work under Chief Hicks has been named.

In recommending the investigation division, Gov. Coleman said its assignment will be to check on maneuvers of those seeking to force integration in Mississippi 'so we can be ready for all counterattacks.' "

March 1958

"Sen. Yarbrough also offered a resolution calling on the State Sovereignty Commission, the state's segregation 'watch-dog' agency, to determine the 'ultimate objective' of the NAACP in Mississippi. It was recommended by the state department of the American Legion.

The membership-filing bill applies to 'all fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military or social organizations' in Mississippi.

Sen. Yarbrough admitted that the proposal is aimed at the NAACP. It is *Senate Bill 1829.*"

April 1958

"Both branches of the Mississippi legislature have approved an investigation of the NAACP. It is designed to ascertain the organization's 'ultimate purpose in Mississippi.'

The inquiry was based on a recommendation for it by the state department of the American Legion which charges that some of the national officers have been accused of as-

Mississippi (Cont'd.)

sociating with un-American groups. However, no charges as such have been made against the organization by federal agencies.

Another legislative approach to the activities of the NAACP is in a bill seeking to force it to file a list of its members with the secretary of state."

August 1958

"In opening an investigation of the NAACP, Sen. Stanton Hall of Hattiesburg, chairman of the General Legislative Investigating Committee, said the action is 'merely watchdog action.'

'This investigation is just to watch the NAACP,' Chairman Hall said. 'We are going to keep an eye on them as the legislature said.'

The 1958 legislative resolution authorizing the probe charged that the NAACP 'has a tendency to support various causes and legislation that have had a tendency to disrupt and in many cases threaten our American way of life.'"

South Carolina

October 1955

"A state representative from Orangeburg County (where numerous Citizens' Councils have been formed in the wake of the filing of several integration petitions) says he will seek a legislative investigation of NAACP activities at South Carolina's State College (for Negroes) at Orangeburg.

Rep. Jerry M. Hughes said:

'Such an investigation would determine who are members and sympathizers of the NAACP among the faculty and student body, the extent of such member participation in such activities and whether or not its members are misleading the Negro Citizens and misrepresenting the aims and objectives of the NAACP to the Negro people.'"

South Carolina (Cont'd.)

April 1956

"Following is an itemization of legislation enacted by the General Assembly during the current session which is directly related to segregation . . .

H-1900, a joint resolution authorizing the establishment of a nine-member committee to investigate NAACP activities 'among the faculty and students of the South Carolina State College (for Negroes).'

The president of the Negro College, Dr. B. C. Turner, acknowledged to the press that he had received an anonymous petition protesting the legislative investigation of NAACP activities at the school, but said so far as he knew the petition was not presented to, discussed by, or passed upon by the college faculty."

July 1956

"Meanwhile, six members of a legislature authorized committee to investigate certain activities of the National Association for the Advancement of Colored People were named. The committee was created by the 1956 General Assembly during its regular session. The group is charged with inquiring into the activities of the NAACP at State College (for Negroes) at Orangeburg. Specifically, it is to determine the extent to which faculty and student body at the college have participated in NAACP activities, and whether the net results have been detrimental to the school and the state."

August 1956

"The membership of a nine-man committee charged with investigating NAACP activities at State College (for Negroes) at Orangeburg was completed during July.

The committee has the responsibility of making an investigation of NAACP activities 'among the faculty and students of the South Carolina State College, and shall determine what individuals at the college are members of and sympathizers with the NAACP. The committee shall fur-

ther determine the extent of participation of the faculty and students in the activities of the NAACP, and whether or not the faculty and students are serving to mislead the Negro citizens and foment and nurture ill feeling and misunderstanding between the white and Negro races; and whether or not the activities of the faculty and students are detrimental to the welfare of the college, its students and the state of South Carolina as a whole'.

The investigating committee began its study on July 17 with meetings at the Orangeburg college. Sen. McFadden was named chairman; Rep. Hughes, vice chairman.

The day-long meeting was closed to the press in order to permit witnesses to speak with 'more freedom,' according to Hughes. The only statement issued by the committee said that Dr. Benner C. Turner, Negro president of the college, and Wallace C. Bethea, secretary of the all-white board of trustees, had been 'questioned at length'."

September 1956

"A special committee charged by the 1956 General Assembly with investigating NAACP activities at South Carolina State College (for Negroes) completed its hearing in late August but did not make public its findings. The nine-member group of legislators and laymen held hearings at the state college campus at Orangeburg and queried a number of staff and faculty members, among others. State Sen. James Hugh McFadden of Clarendon reported as committee chairman that the group had concluded its hearings and would draft a report for submission to the legislature when it convenes for the 1957 session in January."

February 1958

"On Jan. 29, Gov. Timmerman addressed a special message to the General Assembly and in it reported that Communists were thought to be active at Benedict College. The governor urged early action toward the establishment of a permanent committee to investigate communism in the

state, and said this with respect to the second Negro institution:

'It is believed that the presence of Communists at these two Negro institutions is in furtherance of a long-range program to promote racial hatred among young and impressionable Negro students, looking toward an ultimate Communist goal of creating civil and racial disorder.'"

March 1958

"'Charges made by Gov. George Bell Timmerman Jr. during January that two Negro college faculties at Columbia had been infiltrated by persons suspected of Communist leanings brought these February consequences:

(1) Legislation was introduced in both houses of the General Assembly aimed at creating a joint continuing committee to investigate communism in South Carolina . . .

(4) William C. Plowden Jr., a lieutenant in the Army Reserve and department commander of the American Legion in South Carolina, endorsed Gov. Timmerman's stand. He said: 'The governor's proposal (for an investigating committee) is excellent. I think we should expose any Communist or former Red party member in our state. It appears that at least two of the colleges have a faculty tainted with members who are listed in House un-American Activities Committee files.'

(5) The Negro Inter-Denominational Ministerial Alliance of Columbia issued a lengthy statement opposing the probe suggested by Gov. Timmerman. The Negro ministers doubted that the probe would be fairly conducted, feared that 'a fascist gestapo' would result, and termed the investigation 'a threat to Negro academic freedom.' They added that it was not necessary and said the Federal Bureau of Investigation is available to ferret out Communist threats. The Ministerial Alliance also served notice that 'if such a law is passed . . . the legality of the law will be tested in the higher courts of the federal government.'"

South Carolina (Cont'd.)

May 1958

"The race issue was indirectly caught up in legislation approved by the General Assembly authorizing the establishment of a permanent committee to investigate Communist activities in the state. Creation of such a committee was recommended strongly by Gov. George Bell Timmerman Jr. in messages expressing his concern over reports that Communist connections extended to certain members of the faculties of two Negro colleges in Columbia: Allen University and Benedict College. The measure had become law before the legislative adjournment, but committee members had not yet been named."

Virginia

February 1957

"A General Assembly committee of eight lawyers and two laymen has been appointed to investigate organizations which try to influence or promote racial litigation in Virginia.

Appointed by the heads of the two branches of the legislature were State Sens. Earl A. Fitzpatrick of Roanoke, Landon R. Wyatt of Danville, Mills E. Goodwin Jr. of Suffolk, and George S. Aldhizer II, of Rockingham County, and Delegates James M. Thomson of Alexandria, Frank P. Moncure of Stafford, Harold H. Purcell of Louisa, George E. Allen Jr. of Richmond, R. Maclin Smith of Kenbridge and Charles B. Cross Jr. of Norfolk County.

Smith is a druggist and Wyatt an automobile dealer. All the others are lawyers.

The group decided to call itself the Committee on Law Reform and Racial Activities. Thomson, chief patron of the bill setting up the committee, was elected chairman.

Leslie Hall of Alexandria has been employed as chief counsel. Hall, a 44-year-old native of Alabama, will be on leave from his position as assistant commonwealth's attorney of Alexandria while handling the committee assignment. The committee will have its headquarters in Alexandria.

Virginia (Cont'd.)

The group's third meeting will be held at the capitol in Richmond on Feb. 20."

March 1957

"Under date of Jan. 14 and over the signature of John B. Boatwright Jr., secretary, the General Assembly's Committee on Offenses Against the Administration of Justice sent the following letter to W. Lester Banks, executive secretary of the Virginia State Conference of NAACP branches:

'At the direction of the Lsgislative Committee on Offenses Against the Administration of Justice, I request you to furnish for the calendar year 1956 the following information within two weeks from the date hereof:

'(1) The names and addresses of the principal officers of your organization and also the names and addresses of the agents, servants, employes, officers and voluntary workers and associates through whom your organization carries on its activities in this state, and also the names of your members in this state.

'(2) A certified statement showing the location of each office, branch, division, council, subsidiary, or other agency through or by which your organization engages in any activity in this state and the nature of such activity and the names and addresses of the officers, or other persons in charge of each such office, branch, division, council, subsidiary, or other agency of your organization.

'(3) A certified statement showing in detail by each transaction all contributions, donations, gifts, or other income received by your organization during the year 1956 from sources in this state . . .;

'(4) A certified statement showing in detail by each transaction all expenditures and disbursements made by your organization within this state during the year 1956 . . .'

On Jan. 30 another committee created by the General Assembly at its special session last fall, the Committee on

Virginia (Cont'd.)

Law Reform and Racial Activities, sent a letter to the NAACP asking for the same data requested by the other committee, plus this additional information:

'Copies of all correspondence between your organization and persons in Virginia to whom your organization has rendered legal aid directly or indirectly; this also includes correspondence between your organization and the parents, guardians, or other custodians of any such person on whose behalf legal aid was rendered.

'Copies of all correspondence between your organization and persons in this state who have been parties litigant or prospective parties litigant in proceedings involving admission to or exclusion from the public free schools as such correspondence involves any such litigation . . .

'Verified copies of all state and local tax returns which your organization has filed with state and local authorities.

'Verified statements showing separately the franchise taxes, and any other taxes which your organization has paid this state and its localities and the years for which such were paid . . .' "

April 1957

"Meanwhile, on March 12, the Committee on Law Reform and Racial Activities quizzed five NAACP officials in sessions closed to the public. The association officials provided certain information the committee wanted but refused to disclose the names of NAACP members, contributors and local officials.

At the end of the month it was disclosed that the committee also was questioning the 22 parents who filed the Arlington County desegregation suit.

Asked about this investigation, Delegate James M. Thomson, committee chairman, said, 'I understand the investigator isn't getting very far.' Thomson said the committee wanted to find out whether the parents actually originated the Arlington suit or whether someone else gave them the idea. There are both white and Negro parents among the plaintiffs."

Virginia (Cont'd.)

May 1957

"Continuing its investigation concerning racial litigation, the General Assembly's Committee on Offenses Against the Administration of Justice has met in closed session with five Negro attorneys and with other NAACP officials. The committee issued a brief statement at the conclusion of the six-hour session saying that 'much information was obtained.'

Both committee members and witnesses said that the tone of the meeting was friendly, although David E. Longley, state treasurer of the NAACP, described the hearing as 'a well organized inquisition.'

The Legal Defense and Education Fund of the NAACP has supplied the committee at least some of the data the committee has sought by subpoena. But it was not announced exactly what information was included."

June 1957

"Two legislative committees created by the General Assembly last year are continuing their probe into activities of the NAACP.

The Committee on Law Reform and Racial Activities spent two days in Farmville quizzing witnesses concerning aspects of the Prince Edward County desegregation case. After questioning 36 persons, Delegate James M. Thomson of Alexandria, committee chairman, said that 'testimony indicated there could have been violation of the canons of professional ethics (in the Prince Edward case) since some witnesses testified that they had no idea of paying court costs or attorneys.'

He added that 'six years after the suit was instituted, some witnesses don't recognize themselves as plaintiffs in that suit.'

But S. W. Tucker of Emporia, an attorney representing some of the NAACP members questioned by the committee, said that the questioning had not developed the full circumstances of the suit. 'The committee had already conceived

its opinion,' he said, 'and called witnesses to bear it out and avoided any who might have refuted it.'

The Committee on Offenses Against the Administration of Justice conducted a hearing in Charlottesville on May 15. The Charlottesville hearing, like the one in Farmville, was closed to the public. After the session, it was learned that some of the plaintiffs in the Charlottesville desegregation suit had testified to the committee that when they signed papers dealing with the race matter, they were not aware that they were authorizing suits to be brought in their names.

Other plaintiffs, however, who were summoned by the committee but not called to testify, told reporters they were fully aware of what they were signing. Oliver W. Hill, NAACP attorney, said 'they (the committee) get people with no experience in this kind of thing and ask leading questions . . . Nobody has an opportunity to examine witnesses to see if they understand the purpose of what they are saying.' "

July 1957

"The General Assembly's Committee on Offenses Against the Administration of Justice last month obtained a second round of subpoenas for certain information from the National Association for the Advancement of Colored People.

The NAACP's response was to go to court with motions to dismiss the subpoenas. The motions will be heard early in July in state courts in Richmond, Norfolk and Prince Edward County.

The subpoenas ask for 'all letters, telegrams, memoranda, printed matter and other writings . . . which subsequent to Dec. 31, 1949, were sent to or received from any one or more of' NAACP officers, directors and attorneys and plaintiffs in certain desegregation cases.

The subpoenas also ask for financial records of the NAACP in Virginia since Dec. 31, 1949. Two banks which handle NAACP accounts presented financial data concern-

ing the NAACP to the committee in answer to the subpoenas."

August 1957

"In another controversy between the NAACP and the state, the association's Prince Edward County branch on July 10 turned over its records to the General Assembly's Committee on Offenses Against the Administration of Justice.

In a hearing in the Prince Edward Circuit Court on July 5, Judge Joel Flood had told the Rev. William Francis Griffin, president of the NAACP's Prince Edward branch, that he would be fined $500 and given a six-month jail sentence if he did not comply with a subpoena directing him to turn over membership lists and other data to the committee.

In the Richmond Circuit Court, attorneys for the association and for the committee reached an agreement on July 9 whereby the records of the Richmond NAACP branch were to be given to the committee."

September 1957

"Two Negro attorneys, appearing as counsel for witnesses called before the General Assembly's Committee on Law Reform and Racial Activities at Norfolk on Aug. 15, invoked the Fifth Amendment rather than testify.

During a morning session, closed to the public and press, the committee asked Attorneys Victor J. Ashe and J. Hugo Madison who had paid the court costs and attorney's fees in the Norfolk case. The two lawyers are members of the NAACP legal staff and both represent plaintiffs in the school suit.

The committee also asked the lawyers whether a meeting of the witnesses subpoenaed to appear before the committee, had been held in Madison's office the previous night.

The two lawyers at first declined to answer, saying they had not been subpoenaed. The committee immediately

issued subpoenas for them. They again declined to answer on the ground that they were entitled to legal counsel.

The committee then prepared a petition asking Judge Clyde H. Jacob of the circuit court to require the lawyers to show cause why they should not be found in contempt.

After a hearing of the matter in chambers, Judge Jacob told the lawyers that 'if every witness could request a counsel any time he was called on to testify, the administration of justice would stop.'

Madison asked if they would have to testify if they invoked the Fifth Amendment, and the judge said they would not. Madison then said he had an appointment elsewhere in the state the next day so he would go ahead and invoke the Fifth Amendment. Ashe did likewise.

Later, the two attorneys sent Delegate James M. Thomson, chairman of the legislative committee, a telegram which said in part:

'. . . We have maturely considered the entire matter and are willing to waive our privilege and appear before the committee upon some mutually agreed date, and answer any pertinent questions relating to any litigation in which we have participated involving the segregation laws of Virginia, provided we are granted the right to be represented by counsel.'

Thomson said he would take the matter up with the committee at its next meeting.

Meanwhile, the committee chairman revealed that he believes that information already collected by his group could be used to keep the NAACP from participating in further racial litigation in the state. He said he didn't think any new laws would be needed to do this."

October 1957

"The General Assembly's Committee on Law Reform and Racial Activities last month conducted two days of closed-door hearings devoted primarily to probing circumstances surrounding the filing of the Arlington desegregation suit.

Virginia (Cont'd.)

Witnesses accused the committee of 'witch hunting' and 'Gestapo tactics.' There also was criticism of the committee investigators' practice of using hidden recording devices to record answers to questions asked in pre-hearing conversations with potential witnesses.

The hearings were held Sept. 19 and 20 in the Arlington County Courthouse.

First witness called was Edwin C. Brown, regional counsel for the NAACP. Later, Samuel W. Tucker of Emporia, Va., a member of the NAACP legal staff, who acted as Brown's personal attorney, said Brown refused to turn over his personal financial records to the committee.

The committee the next day secured a court order from Arlington Circuit Judge William D. Medley requiring Brown to turn over his attorney fee book for the period from June 1950 through June 1955. Committee Chairman James M. Thomson explained that Brown had given the committee some of his records but not those for the period from June 1954 to June 20, 1955.

Others among the 15 witnesses heard during the two days were:

Mrs. A. J. E. Davis, a white woman who escorted three Negro pupils to the white Stratford Junior High School in Arlington on the opening day of the term in an unsuccessful effort to get them enrolled.

Jack Orndorff, a white parent who originally was a plaintiff in the Arlington case but who withdrew in July 1956, under pressure of what he said were abusive phone calls and harassment.

Mrs. Margaret I. Finner, a white Arlington woman who entered the school case after Orndorff withdrew. Mrs. Finner criticized the use of hidden recording devices in interviews with prospective witnesses, saying she did not know at the time of her interview that her words were being recorded. (Later, Chairman Thomson told reporters the committee expected to continue using the devices. He said the investigators did not voluntarily tell persons being interviewed that their words were being recorded but

that the use would have been admitted if any such person had asked.)

David H. Scull of Annandale, Va., a vice president of the Fairfax Council on Human Relations. Scull gave the committee a prepared statement saying he believes the committee is part 'of a whole legislative program of intimidation and harassment' and lacks 'proper jurisdiction to pursue its inquiry.' The committee secured an order from Judge Medley directing Scull to appear in the court on Oct. 8 for a hearing on why he should or should not answer specific questions.

Attorneys Albert I. Kassabian and C. Douglas Adams Jr., who represent Mrs. DeFebio in her suit challenging the constitutionality of the pupil placement law. Committee Chairman Thomson said later that testimony indicated the DeFebio case had been 'free from any influences other than the normal attorney-client relationship.'

As to the hearings as a whole, Thomson said 'the testimony clearly indicates the attorneys' fees and/or court costs have been paid by others than the plaintiffs in the (Arlington) suit.' He said 'the individual plaintiffs did not have control of their suit.'

Twelve plaintiffs, in an open letter to the committee, labeled the Thomson charge 'preposterous.' They said the attorneys conducted the suit in accord with the plaintiffs' wishes, securing favorable decisions in five court actions since the suit was filed in May 1956."

November 1957

"The committee also ran into opposition when the chairman, Delegate James Thomson, asked school superintendents in four northern Virginia communities to furnish lists of textbooks and reference books used in the schools. (There is more sentiment for integration in northern Virginia than in other parts of the state.)

Supt. T. Edward Rutter of Arlington County supplied the textbook list but refused to undertake what he termed 'the mountainous job' of listing all reference books.

Virginia (Cont'd.)

After news stories concerning this controversy were published, two members of the committee—State Sen. Mills E. Godwin, Jr. of Suffolk and Del. Charles B. Cross Jr. of Norfolk County—sent telegrams to Thomson implying that the book probe was undertaken without knowledge of the full committee. They asked that any further efforts along this line be deferred until the entire committee could get together.

Several legislators of northern Virginia protested the effort to secure the book lists. Among them, Del Harrison Mann wrote the committee to 'stay out of Arlington schools,' and Sen. Armistead L. Boothe of Alexandria said the committee 'is seeking to exercise power expressly denied to it by the General Assembly.'

Chairman Thomson then issued a statement declaring that the purpose of the school book investigation had been 'deliberately distorted by certain would-be politicians.' He said the committee simply wanted to find out whether school books contain material encouraging racial integration.

The Thomson committee, set up by the General Assembly last year, went out of existence on Nov. 1."

December 1957

"The NAACP and affiliates were denounced by two legislative committees in reports to the General Assembly last month.

The Committee on Offenses Against the Administration of Justice and the Committee on Law Reform and Racial Activities were set up by the special session of the General Assembly in 1956. Their investigations centered primarily on the role of the NAACP in desegregation cases in Virginia.

The Committee on Offenses Against the Administration of Justice charged that the NAACP, the NAACP Legal Defense and Educational Fund, Inc., and various NAACP branches in Virginia have been guilty of the common law offense of 'maintenance' (an offense in which 'a person without interest in a suit officiously intermeddles therein').

Virginia (Cont'd.)

The NAACP and certain NAACP atttorneys were charged with the common law offense of barratry, and 10 NAACP lawyers were charged with unprofessional conduct. The NAACP and certain of its state officials were charged with unauthorized practice of law.

The committee itself did not take steps to bring any legal action against those it claimed had violated the laws. Instead, it recommended, in effect, that the General Assembly tell the proper enforcement authorities to proceed against the groups and individuals named in the report as offenders.

The committee declared it found many of the plaintiffs in desegration suits in Virginia were not advised that they were to be plaintiffs in law suits, and that these plaintiffs testified they had not authorized anyone to bring suits on their behalf. The committee said the suits were 'prompted, directed and conducted' by the NAACP and its affiliated groups and that expenses were paid by these organizations.

The report of the Committee on Law Reform and Racial Activities was in the same vein, though less specific in charges of law violations. The group said it would forward the information it had to any committee of the Virginia State Bar 'which seeks to take action' against the NAACP or its lawyers. The committee did accuse the NAACP of 'unauthorized' practice of law.

This committee also made a brief study of textbooks used in the Tenth District (northern Virginia) and said that while it had not had the time to arrive at any definite conclusions, it did recommend that 'a further study be made of text and reference material in the public schools systems of the Commonwealth of Virginia by an appropriate agency of the state government.'

It recommended that the General Assembly create a new committee to carry on the work of the two investigative committees which have been working in the racial field. The new committee would have broadened powers to investigate, among other things, 'subversive activities generally, and more specifically as they relate to the question of segregation or integration in the public schools.' "

Virginia (Cont'd.)

February 1958

"As it neared the mid-point of its biennial 60-day session, the legislature was considering bills to continue an investigation of the NAACP and similar groups active in the race relations field. It also was considering proposals for investigation of the public school curriculum and of whether children are being subjected to pro-integration teachings. Gov. Almond told reporters he had serious doubts about the proposed study of the curriculum and teachers."

March 1958

"The House of Delegates, by a vote of 81-5, approved the creation of a special legislative committee to continue investigations of organizations engaged in racial activities. The new group would carry on the work which has been done during the past two years by two separate Assembly committees.

Taking note of the fact that the two former committees held only closed meetings, Del. Kathryn Stone of Arlington tried to get an amendment to provide that a substantial portion of the new committee's work be done in open session. Her attempt was defeated (she alone voted for the amendment) following an exchange in which Del. Frank Moncure of Stafford County said Mrs. Stone was an 'integrationist,' was opposed to the investigation and that therefore her amendment was not due consideration."

April 1958

"Del. John B. Boatwright of Buckingham was the sponsor of the bill, which was approved, to establish a seven-member committee to continue investigation of organizations engaged in racial activities. He was chairman of one of the two committees which conducted such a probe during 1956-58, and is considered a likely choice to head the new group."

In the

Supreme Court of the United States

October Term, 1958

No. 51

DAVID H. SCULL,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA, EX REL. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES,

Respondent.

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether the Petitioner was legally justified in refusing to obey the Orders of a Court of competent jurisdiction requiring him to answer questions put to him by a duly constituted Legislative Committee.

STATEMENT

At the time of his appearance before the Committee, Petitioner based his refusal to answer the Committee's questions on his rights under the provisions of Sections 8, 11, and 12 of the Virginia Constitution "and the correlative provisions of the Federal Constitution" (Tr., September 20, 1957, pp. 202-205). Petitioner did not specifically rely

on the First and Fourteenth Amendments to the Constitution of the United States, and such Amendments have only come into this matter by way of the arguments presented by his counsel (Tr., October 15, 1957, pp. 4, 54, 61), and before this Court.

His reliances on the provisions of the Virginia Constitution were effectively answered when he was denied a Writ of Error by the Supreme Court of Appeals of Virginia (Order, January 20, 1958; R. 111-112).

ARGUMENT

The Petitioner places considerable reliance on *United States* v. *Rumely*, 345 U. S. 41, 97 L. ed. 770, 73 S. Ct. 543, but fails to take into account that portion of the opinion wherein it was stated that "Whenever constitutional limits upon the investigative power of Congress have to be drawn by this Court, it ought only to be done after Congress has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits. Experience admonishes us to tread warily in this domain" (p. 46). The same applies with at least equal force and vigor to the investigative power of a State legislative body in its search for information on which to base appropriate legislation. If the Federal Courts can step in and prevent State legislative bodies from making inquiries into fields reserved to them, then such legislative bodies cease to have any meaning or purpose.

The Petitioner also relies heavily on *Watkins* v. *United States*, 354 U. S. 178, and *Sweezy* v. *New Hampshire*, 354 U. S. 234, but a careful reading of these two cases fails to indicate that they are on all fours or are in any way applicable to the facts in the case at bar; nor does it appear that either of them overrules, modifies, or otherwise limits the

decisions in *Carfer* v. *Caldwell* (1906), W. Va., 26 S. Ct. 264, 265; 200 U. S. 293, 50 L. ed. 488, 50 A. L. R. 1; *McGrain* v. *Daugherty*, 273 U. S. 135, 71 L. ed. 580, 47 S. Ct. 319; *Sinclair* v. *United States*, 279 U. S. 263, 73 L. ed. 692, 49 S. Ct. 268; or *Tenney* v. *Brandhove* (Calif.), 71 S. Ct. 783, 341 U. S. 367, 95 L. ed. 1010.

In the last case cited, this Court said:

> "Investigations, whether by standing or special committees, are an established part of representative government. . . . The Courts should not go beyond the narrow confines of determining that a Committee's inquiry may fairly be deemed within its provinces. To find that a Committee's investigations have exceeded the bounds of legislative inquiry, it must be obvious that there was a usurpation of functions exclusively vested in the Executive or the Judiciary."

As was pointed out by the Trial Court (Tr., October 15, 1957, p. 85), the questions asked by the Committee were only of a preliminary nature. The answers to these questions could not possibly have the effect of restraining or deterring the Petitioner in any way. As the Chairman pointed out to the Petitioner, the subjects under inquiry were three-fold (R. 73). All of these were proper subjects of legislative inquiry, and in order that the Committee might carry out its functions, it was certainly necessary, indeed, *proper* to inquire into the workings of organizations which might be affected thereby. The only way to learn about such organizations is to question those connected therewith. If questions concerning membership in the Communist Party are pertinent to a congressional investigation into subversive activities (*Barsky* v. *United States*, 83 App. DC 127, 167 F. 2d 241, *cert. den.* 334 U. S.

843), as well as an inquiry as to finances and personnel of an organization which is under investigation (*Morford* v. *United States,* 85 App. DC 172, 176 F. 2d 54; *Marshall* v. *United States,* 85 App. DC 184, 176 F. 2d 473, *cert. den.* 339 U. S. 933), then the mere preliminary questions asked by the Thomson Committee are not subject to the criticism that they constituted an invasion of Constitutional rights.

NAACP v. *Alabama,* 357 U. S. 449, has no application here, because in the case at bar, the Petitioner was not asked to produce any membership lists of any organizations. Petitioner, therefore, has tried to extend the holdings in the *Watkins, Sweezy* and *NAACP* cases far beyond what the Court said or meant.

The Petitioner has adopted a method of presentation of his case which is all too prevalent these days—that is, he has gone completely outside the record in including in his Brief such material as quotations from the *Washington Post and Times Herald, Theology Today,* and *The Southern School News.* Surely, this Court will not be swayed by such obvious political and social propaganda.

It is not a matter for a witness before such committees finally to decide whether a question is pertinent to the inquiry. *Townsend* v. *United States,* 68 App. DC 223, 95 F. 2d 352, *cert. den.* 303 U. S. 664, 82 L. ed. 1121, 58 S. Ct. 830.

If the position taken by the Petitioner is allowed to prevail, then neither Congress nor any State Legislature would ever be able to obtain adequate information on which to properly legislate should witnesses called before their respective Committees choose to remain silent. Thus a few individuals would be able to hamstring the whole legislative process. Certainly, such a result was never intended by the framers of the Constitution.

CONCLUSION

For the foregoing reasons, the Respondent contends that the Circuit Court of Arlington County, Virginia, acted within Constitutional limitations in finding the Petitioner guilty of contempt of its Orders, and that the Supreme Court of Appeals of Virginia was plainly right in refusing to grant a Writ of Error.

Respectfully submitted,

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